

CHAPTER Rev 300 BUSINESS PROFITS TAX

Statutory Authority: RSA 21-J:13, I; 77-A:1, III(b); 77-A:4-a; 77-A:6, I & IV; 77-A:15, II

Readopt with amendment Rev 301, effective 8-25-06 (Document #8709), to read as follows:

PART Rev 301 DEFINITIONS

Rev 301.01 "Adjusted gross business profits" means a business organization's gross business profits, as defined in RSA 77-A:1, III, modified by the additions and deductions provided in RSA 77-A:4.

Rev 301.02 "Apportionment" means the division of a business organization's adjusted gross business profits among the states where its activities are conducted by use of a formula provided in RSA 77-A:3.

Rev 301.03 "Association" means a group of individuals or business organizations which:

- (a) Transacts business activity;
 - (b) Perpetuates its period of existence notwithstanding that its members or participants change;
- and
- (c) Might have been created by a formal agreement, declaration of trust or other legal arrangement.

Rev 301.04 "Base of operation" means:

- (a) In the case of transportation property, the place of more or less permanent nature from which property is regularly directed or controlled; and
- (b) In the case of an employee, the place of more or less permanent nature from which the employee regularly:
 - (1) Starts work and to which he or she customarily returns in order to receive instructions from the employer;
 - (2) Communicates with customers or other persons; or
 - (3) Performs any other functions necessary to the exercise of his or her trade or profession.

Rev 301.05 "Business trust" means an organization:

- (a) Properly organized as a trust under the laws of its domicile state; and
- (b) Conducting business activity.

Rev 301.06 "Combined apportionment factors," as used in RSA 77-A:3, III, means the summation of the separately calculated sales, payroll and property apportionment factors of each business organization within a combined group.

Rev 301.07 “Combined group” means ~~a~~—business organizations whose unitary business is conducted within and without New Hampshire through the use of more than one legal entity.

Rev 301.08 “Combined reporting” means the use of a single tax return or document to report the taxable business profits of a combined group of business organizations subject to the business profits tax.

Rev. 301.09 “Commissioner” means the commissioner of the New Hampshire department of revenue administration.

Rev 301.109 “Compensation”, as used in RSA 77-A:3, I(b), means remuneration, excluding fringe benefits, paid for services rendered during the tax period including, but not limited to:

- (a) Salaries;
- (b) Wages;
- (c) Bonuses; and
- (d) Commissions.

Rev 301.110 “Costs of performance” means the direct costs of providing the service or activity determined in a manner consistent with generally accepted accounting principles and in accordance with practices prevalent in the trade or business of the organization.

Rev 301.124 “Earned income”, as used in RSA 77-A:4, III(~~ba~~), means the net earnings from self-employment as defined in IRC section 1402.

Rev 301.132 “Eighty/twenty business organization”, as used in RSA 77-A:1, XV(b), means a separate business organization which includes all its income in a United States tax return but where 80% or more of the average of the payroll and property of such business organization is outside the 50 states and the District of Columbia.

Rev 301.143 “Employee” means any person performing services for a business organization for which compensation is provided except that it does not include a director of a corporation acting in such capacity or an independent contractor.

Rev 301.154 “Enterprises as are expressly made exempt”, as referenced in RSA 77-A:1, I, means:

- (a) Entities exempt from taxation under section 501 of the IRC; and
- (b) Does not mean business organizations which, for federal income tax purposes, serve as conduits either in whole or in part for the real owners such as, but not limited to:
 - (1) Partnerships;
 - (2) Single member limited liability companies;
 - (3) Subchapter S corporations;
 - (4) Qualified subchapter S subsidiaries;

- (5) Grantor trusts;
- (6) Real estate investment trusts;
- (7) Real estate trusts; or
- (8) Regulated investment companies.

Rev 301.165 “Fringe benefits” means the amounts, other than salaries or wages, paid or allowed by the employer to, or on behalf of, the employee for items including, but not limited to:

- (a) Medical insurance premiums;
- (b) Self-insured medical expenses;
- (c) Life insurance premiums;
- (d) Employer portion of F.I.C.A.;
- (e) Unemployment compensation;
- (f) Company discounts;
- (g) Employer contributions to pension or profit sharing plans; or
- (h) Education assistance payments.

Rev 301.176 “Income-producing activity”, as used in RSA 77-A:3, I(c), means:

(a) Transactions and activities directly engaged in by the business organization for the ultimate purpose of obtaining gain or profit and shall include, but not be limited to, the following:

- (1) The rendering of personal services by employees or the utilization of tangible and intangible property by the business organization in performing a service;
- (2) The sale, rental, leasing, or other use of real property;
- (3) The sale, rental, leasing, licensing, or other use of tangible personal property; or
- (4) The sale, licensing or other use of intangible personal property; and

(b) Does not mean:

- (1) Transactions and activities performed for the business organization by independent contractors or other similar persons or entities; or
- (2) The mere holding of a security interest in intangible property.

Rev 301.187 “Independent contractor” means a person who:

- (a) Exercises ~~an~~ independent employment;
- (b) Contracts to do work for multiple business organizations that are not related parties;
- (c) Holds himself or herself out to the public as an independent contractor in the regular course of business; and

(d) Meets one of the following criteria:

- (1) Has been granted independent contractor status by the *United States* Internal Revenue Service for federal income tax purposes; or
- (2) Works according to his or her own judgment or methods, without being subject to any employer except as to the results of the work and, has the right to employ and direct the action of other workers independently of such employer and freed from any superior authority to say how the specified work will be done.

Rev 301.198 “Interdependence in their functions,” as referenced in RSA 77-A:1, XIV, means that relationship in which the New Hampshire entity is an integral part of a larger system where the business done within the state is dependent upon or contributes to the operation of the business without the state as demonstrated by such factors as:

- (a) Centralized management;
- (b) Functional integration; and
- (c) Economies of scale.

Rev 301.1920 “Internal Revenue Code (IRC)” means the United States Internal Revenue Code as defined in RSA 77-A:1, XX, *unless otherwise indicated*.

Rev 301.210 “Manufacturing” means:

- (a) The process engaged in as a business of transforming raw or finished materials by hand or machinery through the application of human labor and skill into a product which has a new form, composition or character different from that in which it was acquired;
- (b) The printing and binding of books, newspapers, magazines or other periodicals;
- (c) The electroplating, galvanizing, anodizing, coloring, finishing, impregnating or heat treating of metals or plastics for use in the process of rolling, drawing or extruding of ferrous and non-ferrous metals;
- (d) Photo finishing and the processing and developing~~ingment~~ of film, slides and photographs;
- (e) The operation of a saw mill or planing mill working on wood or wood products;
- (f) Cooking, baking, freezing of *food items including, but not limited to, legumes*, fruits, vegetables, mushrooms, fish, seafood, meats or grains and flours and placed in a sealed container for further wholesale or retail distribution; and
- (g) The brewing of beverages when such property is placed in a sealed container for further wholesale or retail distribution.

Rev 301.224 “Net profit from all business activity”; as used in RSA 77-A:1, III(b) and Rev 302.01(b), means the difference between the total income and total deductions on federal ~~F~~Form 1120-S after making the modifications required by Rev 302.01(c) (1) and (2).

Rev 301.232 “Net profit from such business activity”, as used in RSA 77-A:1, III(e), means the amount of net income from business activity as is determinable under the provisions of the IRC for corporations and applied within the provisions of RSA 77-A for such business organizations.

Rev 301.243 “Partnership” means an unincorporated entity comprised of 2 or more persons for the purpose of conducting business activity as co-owners.

Rev 301.254 “Principal New Hampshire business organization” means an entity designated as the responsible party for filing all returns, declarations, extensions, or other documents required under the business profits tax on behalf of a combined group.

Rev 301.265 “Proprietorship”, as used in RSA 77-A:1, III and Rev 300, means:

- (a) The ownership of any unincorporated business by an individual; and
- (b) Does not mean businesses conducted by an entity such as, but not limited to a:
 - (1) Partnership; or
 - (2) Single member limited liability company.

Rev 301.276 “Real and tangible personal property” means land, buildings, improvements, equipment, merchandise or manufacturing inventories, leasehold improvements, and other similar property that reflects the organization's business activities.

Rev 301.287 “Regular corporation” means an incorporated business not governed by Subchapter S of the IRC for filing its federal income tax returns.

Rev 301.298 “Representative” means an employee of a business organization, or any person acting on behalf of the business organization. The term does not include independent contractors as defined in Rev 301.187.

Rev 301.2930 “S corporation” means a business organization, for federal income tax purposes, ~~as~~ defined within section 1361 of the IRC.

Rev 301.310 “State”, as used in RSA 77-A:3 and RSA 77-A:4, means:

- (a) Any state of the United States or any political subdivision thereof;
- (b) The District of Columbia;
- (c) The Commonwealth of Puerto Rico;
- (d) A territory or possession of the United States; and
- (e) Any foreign country or political subdivision thereof.

Rev 301.32 “Taxpayer identification number” means:

- (a) Social Security number;***
- (b) Federal employer identification number;***
- (c) Individual taxpayer identification number;***
- (d) Preparer tax identification number; or***
- (e) Department identification number.***

Rev 301.334 “Taxable in another state” means the activities of the business organization in another state:

- (a) Exceed the parameters enumerated in 15 USC section 381, P.L. 86-272,; and
- (b) Are sufficient to create a taxable presence within that state.

Rev 301.342 “Unity of operation”, means there is a centralized executive structure generally directing operations commonly referred to as staff functions.

Rev 301.353 “Unity of ownership”, as used in RSA 77-A:1, XIV, means the activities outside the taxing jurisdiction, together with the in-state activities are owned either directly or indirectly by the same economic entity or group of economic entities.

Rev 301.364 “Unity of use” means there is an executive authority with control over major policy matters and activities of the business organization.

Readopt with amendment Rev 302, effective 8-25-06 (Document #8709), to read as follows:

PART Rev 302 COMPUTATION OF GROSS BUSINESS PROFITS

Rev 302.01 Business Organizations Filing as S Corporations for Federal Income Tax Purposes.

(a) A corporation which qualifies and files as an S corporation, for federal income tax purposes pursuant to sections 1361 through 1379 of the IRC, shall be treated the same as a corporation which files as a regular corporation for federal income tax purposes.

(b) A corporation qualified as a subchapter S subsidiary for federal income tax purposes pursuant to section 1361(b) of the IRC shall:

- (1) Be treated as ~~an regular~~ S corporation ***as provided in (a) above***, for purposes of the business profits tax;
- (2) Maintain sufficiently detailed records to determine the business profits tax liability of the corporation at the corporate level; and
- (3) File its own business tax return unless it is part of a combined return.

(c) The following modifications shall be made to federal ~~Form~~ 1120S to arrive at the net profit from all business activity:

- (1) The ordinary income or loss from trade or business activities on page one of federal ~~f~~Form 1120S shall be increased or decreased by all necessary adjustments including, but not limited to, on schedule K of federal ~~f~~Form 1120S for the amounts of:
- a. Gross income or loss from real estate rental activities less expenses for such activities;
 - b. Gross income or loss from other rental activities less expenses for such activities;
 - c. Interest, dividend or royalty income;
 - d. Short-term and long-term capital gains;
 - e. Net gain or loss under section 1231 of the IRC; and
 - f. Any S corporation income, loss or expenses not included in federal ~~f~~Form 1120S; and
- (2) Expenses allowed to a C corporation may be deducted.
- (d) In a year wherein sections of the IRC pertaining to formation or termination of an S corporation are applicable, and the business organization is required to file a federal S corporation short-year return and a federal regular corporation short-year return for the same tax year, the corporation shall, for purposes of business profits tax complete and file Form NH-1120, "Corporate "Business Profits Tax Return" with the department.
- (e) Form NH-1120 shall be accompanied by both federal returns.
- (f) The method selected to allocate income between the short S corporation and regular corporation tax years for federal purposes shall not alter the amount due under RSA 77-A.
- (g) A taxpayer shall determine the basis of stock held in an S corporation for business profits tax purposes by:
- (1) Calculating the basis amount as if the stock were that of a regular corporation; and
 - (2) Not using basis adjustments which follow federal conduit rules for taxation of partnership-type interests.
- (h) Liquidations of S corporations shall follow the same rules of the IRC as liquidations of regular corporations for business profits tax purposes.
- (i) No part of this section shall be construed as allowing a greater deduction from income or inclusion to income than would be allowable for regular corporations.

Rev 302.02 Partnerships.

- (a) Co-owners of property shall be considered partners in a business organization if they conduct business activity with the intent of dividing the profits.
- (b) Co-owners of property which is maintained, kept in repair, rented or leased shall not, in and of itself, create a partnership.

(c) A business organization that did not, in a prior tax period, make a required addition to gross business profits for an increase of the basis of an asset under RSA 77-A:4, XIV due to the sale or exchange of an interest or a beneficial interest in a business organization shall not be allowed:

- (1) A deduction against gross business profits in any subsequent period for depreciation or amortization on the increased basis in the asset to the extent of the under-reported addition to gross business profits; and
- (2) An increase in the basis of the asset upon disposition in a subsequent period to the extent of the under-reported addition to gross business profits.

Rev 302.03 Proprietorships.

(a) The gross business profits of a proprietorship, except business activity conducted by a single member limited liability company, shall include:

- (1) The total net profit or loss from all businesses, professions, or farming activities reported by an individual on his or her federal income tax return;
- (2) The total net income or loss from rental activities reported by an individual on his or her federal income tax return;
- (3) The total gain or loss from the disposition of all business assets owned by an individual on his or her federal income tax return; and
- (4) The amount of an installment gain from the disposition of all business assets owned by an individual on his or her federal income tax return.

(b) A proprietorship engaged in business activity both within and without New Hampshire shall apportion its gross business profits using the provisions of RSA 77-A:3 and Rev 304.

(c) Where spouses jointly own rental property or provide services for a business activity, and do not file as a partnership for federal income tax purposes, the gross business profits from such business activity shall be reported ***as in its entirety, on a single proprietorship return, by one of the spouses on a consistent basis.***

(d) Gross business profits for a single member limited liability company shall be determined based on the entity type of its member.

Rev 302.04 Use of Separate Accounting. Business organizations shall not determine their New Hampshire business activity for tax purposes by separately computing the net income or loss for business locations within New Hampshire.

Rev 302.05 Business Organizations Whose Income or Expenses are Federally Reportable by the Owners.

(a) Any business organization, whose income or expenses are reportable by the true owners for federal income tax purposes, shall include all items of income and expense in its business profits tax return rather than the return of the shareholder, partner, or other owner.

(b) Any element of income, expense, or both, required to be reported at the entity level for purposes of the business profits tax shall be removed from the true owner's business profits tax return.

(c) The tax for the business organization shall be computed before any distributions, adjustments, or both, resulting from the application of federal tax law provisions which permit the pass-through of items of income or expenses to the owners.

(d) A real estate investment trust shall be subject to the business profits tax on the taxable income of the real estate investment trust prior to adjustments provided in section 857(b)(2) of the IRC.

(e) A regulated investment company shall be subject to the business profits tax on the taxable income of the regulated investment company prior to the adjustments provided in section 852(b)(2) of the IRC.

(f) A single member limited liability company shall:

(1) Obtain a New Hampshire taxpayer identification number, as defined in Rev ~~301.322~~2902.04, from the department by filing ~~Form DP-200, "Request for New Hampshire Taxpayer Identification Number (NHTIN) or a Department Identification Number"~~, as described in Rev 2903.01, *at least 30 days* prior to filing any tax documents with the department if:

~~a. The taxpayer does not have a federal employer identification number;~~

~~b. The taxpayer shares a taxpayer identification number with another taxpayer who is subject to taxation; or~~

~~c. The taxpayer is not required to obtain:~~

~~i. A federal employer identification number;~~

~~ii. Social security number; or~~

~~iii. An individual taxpayer identification number issued by the Internal Revenue Service; and~~

(2) Determine its gross business profits as provided in (a) *above*, in accordance with:

a. RSA 77-A:1, III(a), if the member is a corporation;

b. RSA 77-A:1, III(c), if the member is a partnership;

c. RSA 77-A:1, III(d), if the member is a proprietor; and

d. RSA 77-A:1, III(e), if the member is a trust;

(g) A qualified subchapter S corporation subsidiary shall determine its gross business profits, as provided in (a) *above*, in accordance with RSA 77-A:1, III(b).

(h) A single member limited liability company and a qualified subchapter S corporation subsidiary shall maintain records, as provided in RSA 77-A:11, sufficiently detailed to calculate:

a. Gross business profits;

b. Additions and deductions as provided in RSA 77-A:4; and

c. Apportionment factors as provided in RSA 77-A:3.

- (a) The selling price for the sale or other disposition of a business asset shall be the sum of:
 - (1) Money received;
 - (2) Indebtedness assumed by the buyer or transferee; and
 - (3) The fair market value of any property, other than money, received.
- (b) The basis of the business asset, ~~such as the original cost of the asset less the depreciation allowed or allowable,~~ sold or exchanged shall be:
 - (1) Determined using the requirements of the IRC; and
 - (2) Applied at the entity level.
- (c) One hundred per cent of the recognized gain or loss on the sale, exchange or other disposition of a business asset shall be included in a business organization's gross business profits.
- (d) The recognition and realization of gains or losses on the sale, exchange, or other disposition of property shall be determined based upon the requirements of the IRC except where RSA 77-A and these rules prescribe a different treatment including, but not limited to, the determination of gain or losses using the federal provisions relating to consolidated returns.
- (e) Property owned by more than one business organization shall be reported by each business organization in proportion to its ownership interest on the gain or loss on the sale, exchange or other disposition of such property.

Rev 302.07 Installment Method of Reporting Income.

- (a) Business organizations reporting their income under the installment method, for federal income tax purposes, shall report their income for business profits tax purposes using the same method except as provided in (f) and (g) below.
- (b) Business organizations selling property on an installment basis shall be considered a business organization until all the installments have been reported and the total tax paid.
- (c) The gross sales price of the property shall be considered and not the amount received in a particular year for purposes of the gross business income test.
- (d) Neither the gross selling price nor the installment proceeds shall be included in gross business income except for the year of sale for purposes of the gross business income test.
- (e) A return reporting the installment income shall be filed every year, regardless of the amount of each installment, if the gross sales price exceeded \$50,000 for tax years ending after June 30, 1993.
- (f) The reported installment gain income shall not be increased or decreased by income from the other business activity if the filing of a return is due to the reporting of installment income, and the statutory minimum income level other than for the installment sale has not been met.
- (g) A business organization may elect to report the entire gain or loss in a single year for business profits tax purposes although it has not elected, pursuant to section 453(d) of the IRC, by attaching a completed Form DP-95, ~~Permiss~~**Election to Report Net Gain in a Year of Sale**, to the business profits tax return if the filing requirement for subsequent years is solely the result of reporting the gain or loss from the installment sale to New Hampshire.

(h) The sale, exchange or other disposition of an installment obligation by a business organization shall require the inclusion of:

- (1) The unreported gain or loss in the business organization's business profits tax return covering the year the sale, exchange or other disposition took place; and
- (2) The computation of the gain or loss and the basis of the obligation in accordance with IRC section 453B.

Rev 302.08 Sale of Agricultural Land Development Rights.

(a) Amounts received by a business organization from the state of New Hampshire for the purchase of agricultural land development rights shall constitute gross business income within the meaning of RSA 77-A:1, VI, as gross proceeds from the sale of assets used in the trade or business.

(b) The gain or loss realized from the sale in (a) **above**, shall be includible in the gross business profits of a business organization if such asset is compatible with the underlying business activity.

(c) The gain or loss on the sale of agricultural land development rights to the state of New Hampshire by a farmer shall not constitute the sale of a business asset.

(d) The gain or loss on the sale of agricultural land development rights to the state of New Hampshire by a lessor, shall constitute the disposition of a portion of the assets used in the trade or business of the business organization if it diminishes or destroys the underlying business activity of leasing.

Rev 302.09 Business Organizations Includible in Federal Consolidated Return.

(a) Business organizations includible in a federal consolidated return shall determine their gross business profits without applying sections 1501 through 1505 of the IRC and the U.S. Department of the Treasury's Treasury Regulations 1.1501 et seq.

(b) Business organizations shall compute the basis of their property, including the stock of subsidiaries, using the basis provisions contained in the IRC for non-affiliated corporations.

(c) A combined group of business organizations filing a federal consolidated return shall determine the gross business profits of each separate ~~legal entity~~ **business organization** in accordance with (a) and (b) above.

(d) The amount of income, expense and gross business profits determined under (a) **above**, for each entity shall be added together and all intergroup activity eliminated to arrive at the gross business profits of the combined group.

Rev 302.10 Business Organizations Includible in a Combined ~~Report~~Return.

(a) Business organizations utilizing combined reporting, as defined in Rev 301.078, shall determine the gross business profits of each business organization includible in the combined group as if the **business** organizations were not affiliated ~~companies~~ in accordance with RSA 77-A:1, I and III ~~and Rev 300.~~

(b) The amounts of income from each ~~entity~~**business organization** shall be added and all intergroup activity shall be eliminated to arrive at the gross business profits of the combined group.

(c) The amounts of deductions from each ~~entity~~**business organization** shall be added and all intergroup activity shall be eliminated to arrive at the gross business profits of the combined group.

Rev 302.11 Factors Suggesting Unity of Operation. To determine if a centralized executive structure controls the staff functions indicating unity of operation, the department shall consider the importance to the business organization of, and the extent to which, the following factors are controlled by a centralized executive structure:

- (a) Accounting;
- (b) Advertising;
- (c) Industrial or public relations;
- (d) Insurance;
- (e) Legal;
- (f) Purchasing;
- (g) Research and development;
- (h) Retirement planning; or
- (i) Any other factor commonly referred to as a staff function.

Rev 302.12 Factors Suggesting Unity of Use. To determine if a centralized **executive** authority controls major policy decisions and activities of the business organization indicating unity of use, the department shall consider the importance to the business organization of, and the extent to which, the following factors are overseen or performed by an **centralized** executive authority:

- (a) Defines and controls the general system for producing profit;
- (b) Establishes professional standards to enhance or promote public perception of the business;
- (c) Imposes and enforces procedures to implement compliance of business activities with public law and regulations;
- (d) Sets standards of ethical performance;
- (e) Controls major policy issues;
- (f) Makes budgetary allocations;
- (g) Approves major capital expenditures and expansions;
- (h) Appoints, assigns or transfers personnel **throughout the business**~~for combined group members~~;
- (i) Coordinates the activities of the affiliated entities within the general system of operations;
- (j) Prepares the financial reports;

(k) Determines and defines required intergroup transactions including sales, financing, and transfers of goods or services;

(l) ~~Determines combined group~~ **Makes** decisions in matters involving intergroup conflicts or problems; or

(m) Any other function managed by a central executive authority.

Rev 302.13 ~~Master Limited Partnerships.~~

~~(a) The taxable presence New Hampshire of any master limited partner conducting master limited partnership business activities shall be deemed sufficient contact with New Hampshire to subject the master limited partnership to the provisions of the business profits tax.~~

~~(b) Form NH 1065, "Partnership Business Profits Tax Return", reporting the combined net income of the master limited partnership's unitary business shall be filed in accordance with the provisions of Rev 307.07.~~

Rev 302.143 Election to Adopt Consolidated Group's Averaging Convention.

(a) If a New Hampshire business organization is a member of a federal consolidated group that has utilized a different averaging convention under section 168(d) of the IRC than would be allowable for the New Hampshire business organization under a separate entity filing, the New Hampshire business organization may elect to follow the averaging conventions of its consolidated group by indicating that choice to the department by attaching the following statement to its business profits tax return:

"(name of business organization) hereby elects to adopt the averaging conventions of Internal Revenue Code section 168(d) utilized by the (name of parent) federal consolidated group of which it is a part, and hereby attests that its usage will have no material effect on the tax liabilities of (name of business organization)."

(b) The business organization's election shall be disallowed when an audit is performed on returns filed by a business organization and the audit determines the election resulted in a material impact upon the business organization's New Hampshire tax liability.

(c) The averaging convention otherwise required shall be required for each return so affected in (b) above.

(d) A material impact upon the business organization's New Hampshire tax liability shall occur when there is a variance of 10 % between the tax liabilities calculated using the consolidated group's averaging convention and the averaging convention of non-consolidated entities.

Rev 302.154 Reasonable Compensation for Employees of a Corporation.

(a) Reasonable compensation for an employee of a corporation shall follow IRC section 162 and related federal authority in determining the gross business profits of a corporation.

(b) The business organization shall be allowed to deduct reasonable compensation to an owner employee in determining the gross business profits of a corporation or other organization permitted a federal compensation deduction for any owner employee in arriving at its gross business profits.

Rev 302.165 Professional Limited Liability Companies. A professional limited liability company conducting business activity in New Hampshire shall determine its filing requirement, gross business profits and apportionment of income in the same manner as a limited liability company.

PART Rev 303 ADDITIONS AND DEDUCTIONS MADE TO GROSS BUSINESS PROFITS

Readopt with amendment Rev 303.01 and Rev 303.02, effective 8-25-06 (Document #8709), to read as follows:

Rev 303.01 Compensation for Personal Services of Proprietor, Partner or Member.

~~(a) For purposes of this chapter, the following definitions shall apply:~~

~~(1) "Amounts which are reasonable and fairly attributable to the personal services of the proprietor, partner or member" means the amount that business organizations of similar size, volume and complexity compensate employees with similar responsibility, devotion of time, education and experience as the proprietor, partner or member actually rendering services. The term does not include amounts that are fairly attributable to a return on business assets and amounts that are fairly attributable to a return on the labor of non-owner employees;~~

~~(2) "Fairly attributable to a return on business assets" means the income stream related to the use of business assets defined in RSA 77-A:1, XI, but not the services of maintaining those assets;~~

~~(3) "Fairly attributable to a return on the labor of non-owner employees" means the value to the business organization of its employees generally measured by the income to the business brought about by the efforts of non-owner employees over and above the costs to the organization for those employees including supervisory, training and overhead costs incurred by the business organization; and~~

~~(4) "Actually renders personal services" means the services performed by the proprietor, partner or member of the business organization directly related to the operation of the business organization, but not in the capacity of an employee, owner, partner or member of another business organization.~~

~~(b) Compensation shall be available to a proprietor, partner, or member of a limited liability company taxed as a proprietorship or partnership for federal income tax purposes who:~~

~~(1) Is a natural person; and~~

~~(2) Actually renders personal services to the business organization.~~

~~(c) Compensation shall be allowed for amounts which are:~~

~~(1) Reasonable and fairly attributable to the personal services of the proprietor, partner or member pursuant to RSA 77-A:4, III(a); and~~

~~(2) Not in excess of the maximum deduction allowable pursuant to RSA 77-A:4, III(b).~~

~~(d) In order to support the reasonableness of the compensation deduction for a proprietor, partner, or member, a business organization shall maintain records to indicate the:~~

~~(1) Personal services provided by the individual for the business organization;~~

- ~~(2) Amount of time required to perform the personal services for the business organization taking the deduction; and~~
- ~~(3) The methods used to determine the amount of the compensation deduction.~~
- ~~(e) A business organization may utilize comparative compensation data from:~~
 - ~~(1) Business organizations of similar size, volume and complexity from industry statistics; or~~
 - ~~(2) Publications such as the most current editions of:~~
 - ~~a. The Occupational Outlook Handbook published by the U.S. Department of Labor, Bureau of Labor Statistics, available at www.bls.gov; and~~
 - ~~b. The New Hampshire Wages and Benefits published by the New Hampshire Department of Employment Security, available at www.nhes.state.nh.us, as a reference point.~~
- ~~(f) Each proprietor, partner, or member described in (b) above shall be allowed a minimum deduction of \$6000.~~
- ~~(g) In determining the maximum deduction allowable under RSA 77-A:4, III (b) for the proprietor's, partner's, or member's compensation, the proprietor, partner, or member shall utilize the sum of the following amounts included on their federal income tax schedules:~~
 - ~~(1) The sum of the following amounts from the federal income tax returns of the business organization:~~
 - ~~a. Net profit or loss from federal form 1040, schedule C;~~
 - ~~b. Net farm profit or loss from federal form 1040, schedule F;~~
 - ~~c. Ordinary income or loss from trade or business activities from federal form 1065, schedule K-1;~~
 - ~~d. Guaranteed payments to a partner or member from federal form 1065, schedule K-1; and~~
 - ~~e. Income, expenses or losses from business activities in the regular trade or business or the partnership or limited liability company taxed as partnership for federal tax purposes that are specifically allocated to the individual partner or member;~~
 - ~~(2) Net income or loss, but not less than zero, from rental properties from federal form 1040, schedule E, federal form 8825 and federal form 4835; and~~
 - ~~(3) If the proprietor, partner or member acted as the broker or agent the following shall apply:~~
 - ~~a. If no other broker or agent representing the seller was involved in the sale of the property, a commission not to exceed 15% of the total gross sales price as shown on federal form 4797, federal form 6252, federal form 1065 schedule D, and federal form 1040 for the sale of business assets; or~~
 - ~~b. If the partner, proprietor or member acts as a co-broker, the maximum deduction shall be the difference between the amount determined in a. above and the amounts paid to other brokers or agents.~~

~~(h) A partnership business organization electing to be taxed as a corporation for federal income tax purposes shall:~~

~~(1) Not take a compensation deduction under RSA 77-A:4, III; and~~

~~(2) Take a reasonable compensation deduction as allowed under the IRC when such deduction is:~~

~~a. Taken on the entity's federal corporate return filed with the Internal Revenue Service; and~~

~~b. In accordance with Rev 302.15.~~

~~(i) Where a proprietor, partner, or member provides personal services for multiple business organizations, the records of each organization shall comply with the requirements of (c) above.~~

~~(j) Where a proprietor, partner, or member provides personal services for multiple business organizations, the deduction claimed by each business organization shall be for the personal services rendered to it by the individual in the capacity of the proprietor, partner, or member of the specific business organization for which the deduction is taken.~~

~~(k) Remuneration for the personal services performed by a spouse shall be deductible:~~

~~(1) As compensation in determining the gross business profits of the business organization when the spouse is an employee; or~~

~~(2) Under the provisions of RSA 77-A:4, III if the spouse is not an employee of the business organization and performs the personal services as a surrogate for the proprietor, partner or member.~~

(a) Definitions:

(1) “Actual personal services” means the services performed by a natural person, who is a proprietor, partner or member of an unincorporated business organization, that are directly related to the operation of the unincorporated business organization taking the compensation deduction, but not in any capacity for another business organization;

(2) “Amounts that are fairly attributable to the actual personal services of the proprietor, partner or member” means the amount as would be allowed using the standards set forth in section 162(a)(1) of the United States Internal Revenue Code, as amended, and Treasury Regulations, administrative rulings, and judicial cases interpreting such provision;

(3) “Business activity” means “business activity” as defined in RSA 77-A:1, XII;

(4) “Capital business asset” for purposes of determining the amount of the addition to the fair and reasonable compensation deduction allowable under RSA 77-A:4, III(a) means a “capital asset” as defined in section 1221(a) of the United States Internal Revenue Code, as amended, provided that the capital business asset shall be used by the unincorporated business organization to conduct business activity;

(5) *“Unincorporated business organization” means a proprietorship, partnership, or limited liability company taxed as a proprietorship or partnership for federal income tax purposes;*

(6) *“Gross selling price as commissions on the sale of business assets” for purposes of determining the amount of the addition to the fair and reasonable compensation deduction allowable under RSA 77-A:4, III(a) means the amount received in exchange for the sale or other disposition of a capital business asset measured by the sum of:*

- a. Money received;*
- b. Indebtedness assumed by the buyer or transferee; and*
- c. The fair market value of any property, other than money, received in exchange for the capital business asset;*

(7) *“Natural person” means a human being, as well as a trustee of a grantor trust not recognized as a business organization; and*

(8) *“Total compensation” means the sum of compensation, as defined in Rev 301.10, fringe benefits, as defined in Rev 301.16, and any other form of remuneration for all proprietors, partners or members rendering actual personal services to the unincorporated business organization.*

(b) An unincorporated business organization shall be allowed a compensation deduction for the total compensation that is reasonable and fairly attributable to its proprietors, partners or members who render actual personal services to the unincorporated business organization.

(c) The compensation deduction shall be determined for each proprietor, partner or member who rendered actual personal services to the unincorporated business organization and shall be allowed for amounts that would be allowable as reasonable under Internal Revenue Code section 162(a)(1), as amended from time to time, Treasury Regulation section 1.162-7, administrative rulings and judicial cases interpreting Internal Revenue Code section 162(a)(1).

(d) The amount determined in (c) above shall not exceed the amount reported as earned income, as defined in (a)(7) above, on the federal income tax returns of the proprietor, partner, or member, but may also include:

(1) An amount not to exceed net income from rental properties from federal Form 1040, schedule E, federal Form 8825 and federal Form 4835; and

(2) An amount not to exceed 15 percent of the gross selling price as commissions on the sale of capital business assets. If the proprietor, partner or member acted as the broker or agent for the sale of capital business assets, the following shall apply:

- a. If no other broker or agent representing the seller was involved in the sale of the capital business asset, a commission not to exceed 15 percent of the total gross sales price as shown on federal Form 4797, federal Form 6252, federal*

*Form 1065 schedule D, and federal Form 1040 for the sale of business assets;
or*

- b. If the partner, proprietor or member acts as a co-broker, the maximum deduction shall be the difference between the amount determined in a. above and the amounts paid to other brokers or agents.*

(e) If an unincorporated business organization or group of related business organizations is under audit review by the department and did not elect the record-keeping safe harbor on the return being audited, the unincorporated business organization or group of related business organizations may elect the record-keeping safe harbor during the audit review by filing an amended return reporting a compensation deduction of up to \$75,000 as total compensation for the tax year under audit review, which the department shall accept as reasonable.

(f) The compensation deduction shall not reduce the taxable business profits of the unincorporated business organization to below zero.

(g) An unincorporated business organization that deducts the record-keeping safe harbor amount of up to \$75,000 as total compensation for the tax year shall not be required to keep records as provided under (d), above.

(h) An unincorporated business organization that deducts in excess of the record-keeping safe harbor amount of \$75,000 as total compensation for the tax year shall keep such records as may be necessary to determine that the compensation deduction is reasonable under §162(a)(1) of the U.S. Internal Revenue Code, as it may be amended from time to time, and Treasury Regulations, administrative rules, and judicial decisions rendered thereunder.

(i) A partnership business organization electing to be taxed as a corporation for federal income tax purposes shall:

(1) Not take a compensation deduction under RSA 77-A:4, III; and

(2) Take a reasonable compensation deduction as allowed under Internal Revenue Code section 162 when such deduction is:

a. Taken on the entity's federal corporate return filed with the Internal Revenue Service; and

b. In accordance with Rev 302.14.

(j) Where a proprietor, partner, or member provides actual personal services for multiple business organizations, the records of each business organization shall comply with the requirements of (i), above.

(k) Where a proprietor, partner, or member provides actual personal services for multiple business organizations, the deduction claimed by each business organization shall be for the actual personal services rendered to it by the individual in the capacity of the proprietor, partner, or member of the specific business organization for which the deduction is taken.

(I) Remuneration for the actual personal services performed by a spouse shall be deductible:

(1) As compensation in determining the gross business profits of the business organization when the spouse is an employee; or

(2) Under the provisions of RSA 77-A:4, III if the spouse is not an employee of the business organization and performs the personal services as a surrogate for the proprietor, partner or member.

Rev 303.02 Qualified Research Contributions.

(a) For purposes of RSA 77-A:4, XII(a), the business organization shall add back to its gross business profits the federally deducted amount attributable to the specifically contributed items which meet all requirements of qualified research contributions ~~defined~~ ***set forth*** in RSA 77-A:1, X.

(b) Each business organization taking a qualified research contribution under RSA 77-A:4, XII shall attach a document to its business profits tax return containing the following information:

- (1) Name of each donee;
- (2) Date of each donation;
- (3) Description of each item donated;
- (4) Amount deducted under section 170 of the IRC for the contributed item;
- (5) Business organization's basis in the contributed item;
- (6) Total amount of unrealized appreciation for the contributed item; and
- (7) The portion of the federal contribution carryover attributable to a New Hampshire contribution deducted under RSA 77-A:4, XII.

(c) The amount listed under (b)(7), above, shall be utilized to increase the business organization's gross business profits in subsequent years as the contribution carryover is used to reduce federal taxable income.

(d) When a contribution becomes a New Hampshire qualified research contribution, as defined in RSA 77-A:1, X, that contribution shall:

- (1) Be considered fully taken in the year it is given;
- (2) Not be endowed with special federal tax attributes beyond the scope of the language of RSA 77-A:1, X, such as, but not limited to, the federal carryover capabilities of unused charitable contributions; and
- (3) Not be carried over to a subsequent business profits tax return.

Readopt with amendment Rev 303.03, effective 8-25-06 (Document #8579), as amended, effective 11-21-12 (Document #10233), to read as follows:

Rev 303.03 Net Operating Loss Deduction.

~~(a) No loss amounts incurred before July 1, 1997, as determined by the business organization's method of accounting, shall contribute either directly or indirectly to a net operating loss deduction.~~

~~(ab)~~ Section 172 of the IRC in effect December 31, 1996, for purposes of calculating the amount of any net operating loss deduction allowed under RSA 77-A:4, XIII, shall be followed, except:

(1) The carryback of loss required by IRC section 172 (b)(1) is not required for New Hampshire's purposes; and

(2) The amount is limited as provided in ~~Rev 303.03~~ (d), (e), and (f), below.

~~(be)~~ Net operating losses may be carried forward for 10 years following the loss year.

~~(cd)~~ Business organizations, subject to RSA 77-A:3, regarding the apportionment of income shall apportion any net operating loss carried forward using the formula provided in RSA 77-A:3 and Rev 304.

~~(de)~~ Combined groups with more than one member subject to RSA 77-A shall:

(1) Calculate separate apportionment percentages for each business organization as follows:

a. The denominators used to calculate these percentages shall be the sales, payroll and property denominators of the combined group; and

b. The numerators shall be the New Hampshire sales, payroll and property of each respective business organization subject to RSA 77-A;

(2) Treat each business organization's apportioned share of the combined loss amount as a tax attribute which remains with that business organization;

(3) Total the apportioned loss carry forward amounts of each business organization in the combined group possessing such tax attributes; and

(4) Apply the result in (3) **above** as a deduction from the gross business profits of the combined group before apportionment under RSA 77-A:3 in the taxable period in which the deduction is to be used.

~~(ef)~~ The net operating loss carry forward calculated in either (b), (d) or (e) above, shall be limited as provided in RSA 77-A:4 XIII (a), (b), (c), (d) and (e) for each business organization.

~~(fg)~~ The resulting net operating loss shall be applied to the gross business profits before apportionment under RSA 77-A:3.

~~(gh)~~ Business organizations availing themselves of the net operating loss deduction shall:

(1) Maintain detailed records that confirm each step in the calculation of the:

a. Net operating loss;

b. Net operating loss carry forward; and

c. Net operating loss deduction amounts; and

(2) Retain the federal and state tax returns and the detailed records relating to a net operating loss for all taxable periods to which the net operating loss relates.

(**hi**) During a department audit of a taxable period where a New Hampshire net operating loss deduction is taken on a return, within the statute of limitations, the business organization shall:

- (1) Provide the department with all state and federal tax returns and detailed records with an impact on the proper calculation of the deduction taken by the business organization;
- (2) Not receive a refund for a prior year overpayment nor be assessed additional tax liability for prior year deficiencies resulting from an inquiry that reveals adjustments to prior taxable period net operating loss calculations would be appropriate in the liability of the business organization in any of the prior taxable periods outside the statute of limitations;
- (3) Deduct the appropriate New Hampshire net operating loss deduction in the audit years as if the extra-statutory year adjustments had been made; and
- (4) Adjust the carry forward amount in the years subsequent to the audit year.

Readopt with amendment Rev 303.04, effective 8-25-06 (Document #8709), to read as follows:

Rev 303.04 Interest Income Derived from Notes, Bonds and Other Securities of the United States.

(a) For purposes of this section, “other securities” means a long-term indebtedness similar to a bond that can be sold or exchanged by the owner.

(b) Deposits, such as demand deposits, timed deposits or certificates of deposits, placed in financial institutions of the United States shall not be considered to be notes, bonds or other securities of the United States.

(c) Business organizations shall deduct only interest which is received directly or indirectly from direct obligations of the United States.

(d) Business organizations, upon a request from the department, shall provide documentation showing that the interest was from a direct obligation of the United States.

(e) The documentation provided in (d) **above** shall indicate that the obligation:

- (1) Was in writing;
- (2) Was interest bearing;
- (3) Contained a binding promise by the United States to pay specific sums at specified dates; and
- (4) Contained specific congressional authorization pledging the full faith and credit of the United States in support of the promise to pay.

(f) Business organizations shall deduct that portion of interest from US obligations represented by gross business profits, net of business expenses relating to the obligation as provided in RSA 77-A:4, II.

(g) Interest received on obligations from organizations where the United States guarantees, but is not the principal obligor of the debt, shall not qualify for the deduction provided in RSA 77-A:4, II.

Readopt with amendment Rev 304, effective 8-25-06 (Document #8709), to read as follows:

PART Rev 304 APPORTIONMENT OF ADJUSTED GROSS BUSINESS PROFITS

Rev 304.01 Availability or Requirement of Apportionment for Business Organization.

(a) A New Hampshire domiciled business organization shall apportion its income outside of New Hampshire if:

- (1) Its business activities are conducted both within and without New Hampshire; and
- (2) The business organization's activities were sufficient in another state for that state to impose a:
 - a. Net income tax;
 - b. Franchise tax based upon net income; or
 - c. Capital stock tax.

(b) A business organization not domiciled in New Hampshire shall apportion a portion of its income to New Hampshire if:

- (1) Its activities within New Hampshire are sufficient to meet the due process requirements of the New Hampshire constitution in part 1, article 12 and part 2, articles 5 and 6; and
- (2) Its in-state activities exceed the protection of 15 USC Section 381, P.L. 86-272.

(c) A business organization shall not apportion a portion of its income to another state when:

- (1) Its activities within the other state were not sufficient for that state to impose the taxes referred in (a)(2) above;
- (2) It pays a minimal fee for qualifying to do business within that state; or
- (3) It voluntarily files and pays a tax referred to in (a)(2), above, which it was not legally required to do.

(d) A business organization shall determine its immunity under 15 USC Section 381, P.L. 86-272, by comparing its activities within New Hampshire to the:

- (1) Activities which exceed the protection of P.L. 86-272 when conducted in New Hampshire, such as:
 - a. Making repairs or providing maintenance;
 - b. Owning, maintaining, leasing, or otherwise using any of the following facilities or property:
 1. Repair shop;
 2. Parts department;
 3. Purchasing office;
 4. Employment or recruiting office;

5. Warehousing facilities including the use of public warehouses;
 6. Meeting place for directors, officers or employees;
 7. Stock of goods other than samples used entirely ancillary to the solicitation of orders;
 8. Mobile stores such as a truck with a driver salesman making sales from the vehicle; or
 9. Real property, fixtures or equipment of any kind;
- c. Collecting current or delinquent accounts;
 - d. Installing merchandise or equipment or supervising such work;
 - e. Conducting training programs, seminars or lectures for personnel other than personnel involved only in the solicitation of sales;
 - f. Investigating, handling, or otherwise assisting in resolving customer complaints, other than mediating direct customer complaints when the sole purpose of such mediation is to ingratiate the sales personnel with the customer;
 - g. Approving or accepting customer orders;
 - h. Providing any kind of technical assistance or services, such as engineering assistance or services, when one of the purposes thereof is other than the facilitation of the solicitation of orders;
 - i. Accepting deposits on customer orders;
 - j. Picking up or replacing damaged or returned property.
 - k. Hiring, training, or supervising personnel, other than personnel involved only in solicitation;
 - l. Repossessing property;
 - m. Providing shipping information and coordinating deliveries;
 - n. Maintaining a sample or display room in excess of 14 days at any one location during the taxable period;
 - o. Carrying samples for sale, exchange or distribution in any manner for consideration;
 - p. Consigning tangible personal property to any person, including an independent contractor;
 - q. Using agency stock checks or any other instruments or process by which sales are made within New Hampshire by sales personnel;
 - r. Maintaining, by any representative, an office or place of business in the home or otherwise that is publicly attributed to the business organization or to the agent of the

business organization in their agency status, even if such office is for the exclusive use of soliciting orders; or

s. Conducting any activity in addition to those described in Rev 304.01(d)(2) which is not entirely ancillary to the solicitation of orders, even if such activity helps to increase purchases;

(2) Business activities which fall within the protection of P.L. 86-272 when conducted in New Hampshire, include:

a. Soliciting orders for sales by any type of advertising;

b. Carrying samples only for display or for distribution without charge or other consideration;

c. Owning or furnishing motor vehicles to sales personnel;

d. Submitting inquiries and complaints received to the home office;

e. Checking of customers' inventories without a charge for the purpose of a replacement order but not for other purposes such as quality control;

f. Soliciting orders using an in-state resident representative of the business organization provided the representative maintains no in-state sales office or place of business whether in-home or otherwise that is attributable to the business organization or to the business organization's agent in his agency capacity;

g. Conducting missionary sales activities;

h. Maintaining a sample or display room for 14 days, or less, at any one location during the taxable period;

i. Recruiting, training, or evaluating sales personnel, including occasionally using homes, hotels or similar places for meetings with sales personnel;

j. A representative maintaining an in-home office that is not:

1. Paid for directly or indirectly by the business organization;

2. Attributable to the business organization; or

3. Attributable to the business organization's agents in their agency capacity; or

k. Mediating direct customer complaints when the purpose thereof is solely for ingratiating the sales personnel with the customer and facilitating requests for orders.

(e) Independent contractors conducting activities in New Hampshire on behalf of a business organization shall cause the business organization to:

(1) Lose its immunity when the activities include:

a. Maintaining a consignment inventory of the organization's products other than for purposes of display; or

b. Entering into any other type of arrangement extending beyond the solicitation of orders; or

(2) Not lose its immunity when the activities include:

a. Soliciting and making sales for the business organization; or

b. Maintaining their own office.

(f) A business organization, whose activities do not exceed the protection of P.L. 86-272, claiming exemption under the federal law and desiring to commence the 3 year statute of limitation shall:

(1) Indicate on the front page of their applicable New Hampshire business profits tax return that the business organization is exempt by:

~~a. Placing a check mark in the appropriate box; or~~

~~b. Typing or clearly printing "exempt under P.L. 86-272"; and~~

(2) ~~Not attaching a~~ New Hampshire business profits tax return *including zero apportionment and a* ~~schedules or federal tax return and with~~ schedules.

(g) The purpose of this section is to reconcile the combined reporting method with the limitations imposed by P.L. 86-272 on states' taxing jurisdictions. This section shall be interpreted in furtherance of that purpose.

(h) If any member of a combined group has nexus with New Hampshire, and one member does not have nexus with New Hampshire or another state the following rules shall apply:

(1) An individual business organization shall be subject to the tax jurisdiction of New Hampshire or another state for purposes of Rev 304.01 (b) and (c) respectively only on the basis of the separate activities of that individual business organization and its representatives; and

(2) A business organization shall not be subject to the tax jurisdiction of New Hampshire or another state for purposes of Rev 304.01 (b) and (c) respectively, merely because an affiliate of the business organization conducts business activities in New Hampshire or another state that are unitary with the individual business organization's business activities.

Rev 304.02 Property Factor.

(a) The property factor shall include:

(1) All the real and tangible personal property, as defined in Rev 301.276;

(2) Property that is used, is available for *use*, or *is* capable of being used, during the taxable period in the regular course of the trade or business of the business organization;

(3) Property used in the regular course of business until its permanent withdrawal from use;

(4) Property, in transit with the property being included in the numerator of *the* destination state; and

(5) The value of moveable or mobile property, such as construction equipment and common carrier vehicles, with the value being determined for purposes of the property factor on the total time or miles within a state during the period.

(b) Property or equipment under construction during the tax period, except inventorable goods in process, shall be excluded from the *property* factor until such property is used or available for use by the business organization in its regular trade or business.

(c) Property, other than inventory, owned by the business organization shall be valued at its original cost and be the basis of the property for federal income tax purposes at the time of acquisition, prior to any federal adjustments, and adjusted by subsequent sale, exchange, abandonment, or other such disposition.

(d) Inventory, owned by the business organization, shall be included in the property factor in accordance with the valuation method used for federal income tax purposes.

(e) Property rented by a business organization shall be valued at 8 times the net annual rental rate.

(f) The net annual rental rate shall be the annual rent paid or accrued by the business organization less the aggregate annual sub-rental rates accrued or received from sub-tenants.

(g) Rent shall be the amount payable for the use of real or tangible property whether designated as a fixed sum or as a percentage of sales or profits, and includes any additional amounts due in lieu of rent such as interest and taxes which are required by the terms of the lease.

(h) Business organizations renting property in the regular course of a trade or business shall not deduct such rental income as sub-rents.

(i) Business organizations utilizing combined reporting shall:

(1) Determine the property includible in the property factor after having eliminated all of the inter group activity; and

(2) Eliminate any intergroup profits from the valuation of property included in the property apportionment factor.

(j) The beginning and ending average value of owned property shall be used for the property factor unless material distortions of the *property* factor are caused by:

(1) Fluctuations in values existing during the period; or

(2) The acquisition or disposition of significant property during the period.

(k) Material distortions shall exist in instances where the property factor computed using monthly averages is 25% greater or lesser than the property factor computed using the beginning and ending average.

(l) Business organizations having material distortions caused by the use of a beginning and ending average value shall calculate the value of their property for apportionment purposes using a monthly average.

Rev 304.03 Payroll Factor.

(a) The total amount of compensation paid to employees shall be determined based on:

- (1) The basis of the business organization's method of accounting; or
 - (2) The wages reported on the various state unemployment tax returns.
- (b) The method selected under paragraph (a) *above* shall be used in a consistent manner.
- (c) Business organizations making a change under (a) above from one method to another, shall make all adjustments required in order to prevent the inclusion of the identical wages in the payroll factor for more than one taxable period.
- (d) An employer and employee relationship shall exist before compensation is included in the payroll apportionment factor.
- (e) The employer and employee relationship shall exist when the individual for whom the services are to be performed has the right to:
- (1) Control and direct the individual performing the activities in areas greater than the overall results of the work; or
 - (2) Determine the methods and individuals used in performing the activity.
- (f) Payment made to, or on behalf of, independent contractors shall not be includible in a business organization's payroll apportionment factor.
- (g) A designation of employee or independent contractor adopted by the individuals not factually supported shall not change the relationship that actually exists for purposes of RSA 77-A:3, I(b).
- (h) Business organizations includible in a combined group shall eliminate all intergroup payments for the use of another group member's employees with only the compensation actually paid to the employee being included.
- (i) An employee's compensation shall be included in a state's numerator when:
- (1) The employee's base of operations is located in that state;
 - (2) The employee's activities are controlled from within that state in instances where there is no base of operations; or
 - (3) That state is the employee's state of residency in instances where:
 - a. There is no base of operations; and
 - b. The location from which the employee's activities are controlled cannot be determined.

Rev 304.04 Sales Factor.

- (a) Income producing activity shall include any:
- (1) Transaction, procedure, or operation directly engaged in by a business organization resulting in a separately identifiable item of income; or
 - (2) Activity which creates an obligation of a particular customer to pay specific consideration to the business organization.
- (b) The sales factor shall include:

- (1) Sales less returns and allowances;
- (2) Dividends not eligible for the dividend deduction under RSA 77-A:4, or the factor relief provided in RSA 77-A:3, II(b);
- (3) Interest;
- (4) Rents;
- (5) Royalties;
- (6) Capital gain income;
- (7) Net gains or losses; and
- (8) Other income unless the other income is properly includible as a reduction of an expense or allowance.

(c) The sales factor numerator for separate business organizations and all members of a combined group shall include the sum of:

- (1) Sales of tangible personal property, regardless of the conditions of sale delivered in New Hampshire, other than to the United States government;
- (2) Sales of tangible personal property originating in New Hampshire to a purchaser in another state in which the business organization is not taxable or subject to tax;
- (3) Sales of tangible personal property originating in New Hampshire and delivered to the United States government in any state;
- (4) Interest on ~~installment~~ receivables where the debtor or the encumbered property is located in New Hampshire;
- (5) Gross receipts from the lease, rental or other use of real or personal property located in New Hampshire;
- (6) Gross receipts from the licensing or other use of intangible property when such property is used within New Hampshire;
- (7) Gains or losses from the sale of property located in New Hampshire;
- (8) Capital gains from the sale of business assets located within New Hampshire;
- (9) Dividend income received by business organizations domiciled in New Hampshire;
- (10) Gross receipts for the rendering of personal services when the services are performed in New Hampshire; and
- (11) Other income which is earned in New Hampshire.

(d) The rental, lease, licensing or other use of tangible or intangible personal property in New Hampshire shall be considered a separate and distinct income producing activity within New Hampshire.

(e) Business organizations utilizing combined reporting shall determine the costs of performance as used in RSA 77-A:3, I (c) and Rev 301.1109 for each business organization on a separate entity basis.

(f) When an income producing activity results from the use of personal property within and without New Hampshire during the taxable period, gross receipts attributable to New Hampshire shall be measured by one of the following ratios:

(1) Where the amount of time is the most appropriate measure under the specific facts and circumstances of the business organization's activities, the time the property was used in New Hampshire as compared to the total time of use of the property everywhere during that taxable period; or

(2) Where distance is the most appropriate measure under the specific facts and circumstances of the business organization's activities, the distance traveled or covered in New Hampshire as compared to the total distance traveled or covered everywhere during the taxable period.

(g) Personal services performed in New Hampshire shall be a separate income producing activity performed in New Hampshire unless the business organization can demonstrate the activity performed in New Hampshire is completely dependent upon activities performed by the business organization in one or more other states.

(h) The rendering of personal services shall be attributed to New Hampshire if the activity:

(1) Is completely performed in New Hampshire; or

(2) Performed in New Hampshire is a dependent component of a service performed both within and without New Hampshire and a greater proportion of the costs directly associated with performing such service are incurred in New Hampshire.

(i) Costs of performance shall be determined on a separate entity basis consistent with the separate entity treatment provided in RSA 77-A:1, I notwithstanding that a combined report is filed.

(j) In determining the costs directly associated with the performance of the service in (h) *above*, the business organization shall allocate all compensation costs, including benefits, of personnel rendering the service based on the amount of time spent rendering the service in New Hampshire as compared to the time spent in rendering the service outside New Hampshire.

(k) Expenses incurred in obtaining or retaining customers or clients, including contract negotiations, shall not be costs directly associated with the performance of the service.

(l) The sales price shall include all interest, carrying charge or time-price differential charges and excise taxes passed on to the buyer or included as part of the selling price of the product.

(m) Business organizations includible in a combined group shall eliminate all intergroup transactions with other members of the combined group for both the numerator and denominator of the sales factor.

Rev 304.05 Business Organizations Seeking a Modification of Apportionment Provisions.

(a) A business organization shall petition the commissioner in writing by separate cover for approval prior to using the modified apportionment formula provided in RSA 77-A:3.

(b) The petition for use of the modification of the apportionment formula shall:

(1) Be mailed to:

Commissioner
New Hampshire Department of Revenue Administration
PO Box 457
Concord, NH 03302-0457;

(2) Set forth a complete statement of the facts relating to the request including:

a. For all interested parties:

i. Full names, and addresses;

ii. ~~Federal~~ **Taxpayer** identification numbers; and

iii. Department license numbers, if any;

b. A full and precise statement of the necessity for the modification;

c. A detailed description of the business activity which necessitates the modification;
and

d. Evidence supporting the business organization's petition including:

i. Court decisions on the matter; and

ii. True copies of all contracts, deeds, agreements, instruments, or other documents demonstrating the necessity of the modification;

(3) Reference to the statutory provisions relating to the subject of the petition;

(4) A description of the modified formula proposed by the business organization; and

(5) A statement whether or not, to the best of the petitioner's knowledge, the modification is the subject of prior petition requests of a similar or identical factual nature.

(c) The information in the petition shall be reviewed by the commissioner's designee, to determine whether the requested modification measures the activity being conducted in New Hampshire more accurately than the statutory apportionment formulas.

(d) A petitioner may appeal the department's written determination and request a hearing on the petition in the same manner as an adjudicative proceeding involving the administration, assessment, or refund of taxes governed by Rev 200.

(e) An appeal shall be filed, pursuant to Rev 200, within 60 days of the notice of the ~~recommendation~~ **determination** of the commissioner's designee.

(f) The use of a separate accounting result which differs from the standard apportionment result shall not prove the need for, or the acceptability of, a modified apportionment formula.

(g) If the commissioner disapproves a petition, no return shall be considered filed by the business organization until a proper apportionment schedule is submitted to the department.

(h) The use of a modified apportionment formula by a business organization without prior written approval or final hearing order of the commissioner shall:

(1) Constitute a willful violation of RSA 77-A:3; and

(2) Not be considered filed for purposes of RSA 77-A:6, RSA 77-A:1, VII; and Rev 307 until such approval has been obtained from or ordered by the commissioner.

(i) A copy of the commissioner's approval letter shall be attached to all subsequent returns filed.

Rev 304.06 Use of Special Industry Apportionment Provisions.

(a) A business organization, which is not a member of a ~~water's-edge~~ combined group, may elect to use one of the industry specific apportionment provisions in Rev 304.07 through Rev 304.11, provided more than 50 % of the business organization's:

(1) Gross receipts for the taxable period are from sources relating to the industry identified by the rule; and

(2) Total assets on the last day of the taxable period are commonly related to the industry identified by the rule.

(b) A business organization, which is a member of a ~~water's-edge~~ combined group, may elect to use one of the industry specific apportionment provisions in Rev 304.07 through Rev 304.11 provided more than 50 % of the ~~water's-edge~~ combined group's:

(1) Gross receipts for the taxable period are from sources relating to the industry identified by the rule; and

(2) Total assets on the last day of the taxable period are commonly related to the industry identified by the rule.

(c) The business organization or group of business organizations electing to use the industry specific apportionment provisions contained in Rev 304.07 through Rev 304.11 shall continue to use the apportionment provisions until:

(1) The department grants, in writing, a request made to the department to change the method used;

(2) The principal business organization may request approval by the department to change the apportionment method used by submitting a written request to the department; and

(3) The department approves of a change in the apportionment method upon a showing that the business organizations:

a. No longer meets the requirements to use Special Industry Apportionment Provisions; or

b. Circumstances have changed so that the use of Special Industry Apportionment Provisions no longer accurately reflects the business organization's business activity in New Hampshire.

(d) Unless otherwise indicated, the industry specific apportionment provision elected by the business organization shall apply in its² entirety.

(e) If further adjustments to the formula are necessary to accurately reflect the business organization's business activity in New Hampshire, the business organization may petition for, or the commissioner may require, modification under RSA 77-A:3, II.

Rev 304.07 Adjustments Required to Apportionment Factors for Airline Industries.

(a) ~~For purposes of the section, the following definitions shall apply:~~

- (1) "Aircraft ready for flight" means aircraft which are:
 - a. Owned or acquired through rental or lease;
 - b. In the possession of the business organization; and
 - c. Available for service on the business organization's routes or charters;
- (2) "Commercial airlines" means business organizations which operate aircraft in the income producing activity of carrying passengers or cargo for remuneration;
- (3) "Cost of aircraft by type" means the average original cost, as calculated by the business organization, by type of aircraft ready for flight;
- (4) "Departures" means all takeoffs whether they are regularly scheduled service or charter flights that occur during the taxable period excluding takeoffs where the sole purpose of the departure is the maintenance or ferrying of the aircraft;
- (5) "Mobile payroll" means the total compensation determined in accordance with Rev 304.034~~(a)~~ for flight crew and maintenance facility personnel;
- (6) "Mobile property" means:
 - a. Aircraft;
 - b. Engines;
 - c. Transmissions;
 - d. Electronic components; or
 - e. Other parts of an aircraft capitalized or inventoried for federal income tax purposes or which generally move from location to location in the organization's route system;
- (7) "NH departures" means departures occurring from within the geographical confines of New Hampshire;
- (8) "Non-mobile payroll" means the total compensation determined in accordance with Rev 304.043 for all employees of the business organization other than flight crew and maintenance facility personnel;
- (9) "Non-mobile property" means tangible personal property used in the operation of a commercial airline and permanently located at a particular place of business;
- (10) "Non-transportation sales" means all receipts of the business organization other than those classified as transportation sales;
- (11) "Transportation sales" means the receipts from transporting passengers, freight or mail and the sale of products or services associated with such transportation such as, but not limited to, liquor sales, and audio headset or pet crate rentals.

(b) Commercial airlines shall apportion their income to New Hampshire using the apportionment provisions contained in RSA 77-A:3 and Rev 304.02, Rev 304.03 and Rev 304.04, subject to the adjustments in paragraphs (c), (d) and (e), below.

(c) The property factor's components shall be calculated utilizing the following provisions:

(1) The factor shall be the sum of average New Hampshire mobile property and average New Hampshire non-mobile property, divided by the sum of average mobile property everywhere and average non-mobile property everywhere;

(2) Average New Hampshire non-mobile property, and average non-mobile property everywhere shall be calculated using the provisions of Rev 304.02;

(3) Average mobile property everywhere shall include the average ~~value~~^{cost}, as provided in Rev 304.02 (j), of all mobile property owned, rented and used by the business organization except that aircraft ready for flight shall be included based on the cost of aircraft by type;

(4) Average New Hampshire mobile property shall equal average mobile property everywhere:

a. Multiplied by New Hampshire departures;

b. Divided by total departures; and

c. Departures of aircraft shall be weighted based upon the cost of aircraft by type; and

(5) The property factor shall be expressed by the formula as follows:

$$\begin{array}{rcl}
 \text{Mobile Property} & & \\
 \text{Everywhere} & \times & \frac{\text{NH Departures}}{\text{Total Departures}} = \text{NH Mobile Property} \\
 \\
 \text{Average NH} & & \\
 \text{Mobile Property} & + & \text{Average NH Non-Mobile Property} = \text{Total Average NH Property} \\
 \hline
 \text{Average Mobile Property} & + & \text{Average Non-Mobile Property Everywhere} = \text{Total Average Property Everywhere} \\
 \text{Everywhere} & &
 \end{array}$$

(d) The payroll factor's components shall be calculated utilizing the following provisions:

(1) The factor shall be the sum of New Hampshire mobile payroll and New Hampshire non-mobile payroll, divided by the sum of mobile payroll everywhere and non-mobile payroll everywhere;

(2) New Hampshire non-mobile payroll, and non-mobile payroll everywhere shall be calculated using the provisions of Rev 304.03;

(3) Mobile payroll everywhere shall include the total compensation of the business organization's flight crews and maintenance facility personnel;

(4) New Hampshire mobile payroll shall equal mobile payroll everywhere:

- a. Multiplied by New Hampshire departures;
- b. Divided by total departures; and
- c. Departures of aircraft shall be weighted based upon the cost of aircraft by type; and

(5) The payroll factor shall be expressed by formula as follows:

$$\begin{array}{rclcl}
 \text{Mobile Payroll} & & & & \\
 \text{Everywhere} & \times & \frac{\text{NH Departures}}{\text{Total Departures}} & = & \text{NH Mobile Payroll} \\
 \\
 \text{NH Mobile Payroll} & + & \text{NH Non-Mobile Payroll} & & \text{Total NH Payroll} \\
 \text{-----} & & & = & \text{-----} \\
 \\
 \text{Mobile Payroll} & + & \text{Non-Mobile Payroll} & & \text{Total Payroll Everywhere} \\
 \text{Everywhere} & & \text{Everywhere} & &
 \end{array}$$

(e) The sales factor's components shall be calculated utilizing the following provisions:

- (1) The sales factor shall be the sum of New Hampshire transportation sales and New Hampshire non-transportation sales, divided by the sum of transportation sales everywhere and non-transportation sales everywhere;
- (2) New Hampshire non-transportation sales and non-transportation sales everywhere shall be calculated using the provisions of Rev 304.04;
- (3) Transportation sales everywhere shall include the total transportation sales of the business organization;
- (4) New Hampshire transportation sales shall include the receipts from all passengers and cargo enplaned in New Hampshire; and
- (5) The sales factor shall be expressed by formula as follows:

$$\begin{array}{rclcl}
 \text{NH Transportation} & & \text{NH Non-Transportation} & & \text{Total NH} \\
 \text{Sales} & & \text{Sales} & & \text{Sales} \\
 \text{-----} & + & \text{-----} & = & \text{-----} \\
 \\
 \text{Transportation Sales} & & \text{Non-Transportation} & & \text{Total Sales} \\
 \text{Everywhere} & & \text{Sales Everywhere} & & \text{Everywhere}
 \end{array}$$

(f) The business organization shall maintain the records necessary to substantiate the departures by type of aircraft and the receipts for passengers and cargo that enplaned in New Hampshire and everywhere.

(a) ~~For purposes of this section, the following definitions shall apply:~~

(1) “Outer-jurisdictional property” means tangible personal property, such as orbiting satellites and undersea transmission cables, which are not physically located in any particular state, that are:

- a. Owned or rented by the business organization; and
- b. Used in the business of:
 - 1. Publishing;
 - 2. Licensing;
 - 3. Selling; or
 - 4. Otherwise distributing printed material;

(2) “Print” or “printed material” means the physical or digital embodiment or printed version of any thought or expression including, without limitation:

- a. A play;
- b. A story;
- c. An article;
- d. A column; or
- e. Other literary, commercial, educational, artistic or other written or printed work and may take the form of:
 - 1. A book;
 - 2. A newspaper;
 - 3. A magazine;
 - 4. A periodical;
 - 5. A trade journal; or
 - 6. Any other form of printed matter contained on any medium or property;

(3) “Purchaser” or subscriber” means:

- a. The individual location of the:
 - 1. Residence;
 - 2. Business; or
 - 3. Other outlet which is the final recipient of the print or printed material; and
- b. Not a wholesaler or other distributor of print or printed material; and

(4) “Terrestrial facility” means any:

- a. Telephone line;
- b. Cable;
- c. Fiber optic;
- d. Microwave transmission or reception equipment;
- e. Earth station;
- f. Satellite dish; or
- g. Antennae or other relay system or device that is used to:
 - 1. Receive;
 - 2. Transmit;
 - 3. Relay; or
 - 4. Carry any data, voice, image or other information transmitted from or by any outer-jurisdictional property to the ultimate recipient thereof.

(b) Business organizations having income derived from the publishing, sale, licensing, or other distribution of books, newspapers, magazines, periodicals, trade journals, or other printed material, shall apportion their income to New Hampshire using the apportionment provisions contained in RSA 77-A:3 and Rev 304.02, Rev 304.03 and Rev 304.04, subject to the adjustments in paragraphs (c), (d) and (e), below.

(c) The property factor's components shall be calculated utilizing the following provisions:

- (1) The property factor shall be the sum of average New Hampshire outer-jurisdictional property and average New Hampshire non-outer jurisdictional property, divided by the sum of average outer-jurisdictional property everywhere and average non-outer jurisdictional property everywhere;
- (2) Average New Hampshire non-outer jurisdictional property, and average non-outer jurisdictional property everywhere shall be calculated using the provisions of Rev 304.02;
- (3) Average outer-jurisdictional property everywhere shall include the average ~~value~~ *cost*, as provided in Rev 304.02(j), of all outer-jurisdictional property owned, rented and used by the business organization;
- (4) Average New Hampshire outer-jurisdictional property shall equal average outer-jurisdictional property everywhere:
 - a. Multiplied by the number of uplinks and downlinks used during the taxable period to transmit from New Hampshire and to receive in New Hampshire any data, voice, image, or other information; and
 - b. Divided by the total number of uplinks and downlinks the business organization used for transmissions everywhere;
- (5) Should information requested in (c)(4) above not be available or should such measurement of activity not be applicable to the type of outer-jurisdictional property used by

the business organization, the average New Hampshire outer-jurisdictional property shall be calculated as follows:

a. Average outer-jurisdictional property everywhere shall be:

1. Multiplied by the amount of time, in terms of hours and minutes of use or such other measurement of use of outer-jurisdictional property used during the taxable period to transmit from New Hampshire and to receive in New Hampshire any data, voice, image or other information; and
2. Divided by the total amount of time or other measurement of use that was used for transmissions everywhere;

(6) Outer-jurisdictional property shall be considered to have been used by the business organization in its business activities within New Hampshire when such property, wherever located, has been employed by the business organization in any manner in the following functions:

- a. The publication, sale, licensing, or other distribution of books, newspapers, magazines, or other printed material; and
- b. Transmission of any data, voice, image, or other information to or from New Hampshire, through an earth station or terrestrial facility located in New Hampshire; and

(7) The property factor shall be expressed by formula as follows:

Average NH Outer-Jurisdictional Property	+	Average NH Non-Outer Jurisdictional Property		Total Average NH Property
			=	
Average Outer- Jurisdictional Property Everywhere	+	Non Outer-Jurisdictional Property Everywhere		Total Average Property Everywhere

(d) The payroll factor shall be calculated in accordance with Rev 304.03.

(e) The sales factor's components shall be calculated in the following manner:

- (1) The sales factor shall be the sum of New Hampshire print or printed material sales and New Hampshire non-print or non-printed material sales, divided by the sum of print or printed material sales everywhere and non-print or non-printed material sales everywhere;
- (2) New Hampshire non-print or non-printed material sales, and non-print or non-printed material sales everywhere, shall be calculated using the provisions of Rev 304.04;
- (3) Print or printed material sales everywhere shall include all receipts from advertising and the sale, rental or other use of the business organization's printed materials or customer lists;
- (4) New Hampshire print or printed material sales for each publication shall be equal to the receipts calculated in (e)(3) above:

- a. Multiplied by the business organization's in-state circulation to purchasers and subscribers of its printed material; and
- b. Divided by its total circulation to purchasers and subscribers everywhere;

(5) In the event the purchaser or subscriber is the United States ~~G~~overnment or the business organization is not taxable in a state, the gross receipts from all sources associated with the printed materials, shall be included in the numerator of the sales factor of New Hampshire if the printed material or other property is shipped from an in-state:

- a. Office;
- b. Store;
- c. Warehouse;
- d. Factory; or
- e. Other place of storage or business;

(6) The method used to determine the circulation of a publication shall be used consistently between the numerator and the denominator and from year to year; and

(7) The sales factor shall be expressed by formula as follows:

NH Print or Printed Material Sales	+	NH Non-Print or Non-Printed Material Sales		Total NH Sales
			=	
Print or Printed Material Sales Everywhere	+	Non-Print or Non-Printed Material Sales Everywhere		Total Sales Everywhere

Rev 304.09 Adjustments Required to Apportionment Factors For Television and Radio Broadcasting Industries.

(a) ~~For purposes of this section, the following definitions shall apply:~~

(1) "Broadcast" means the transmission of radio programming by an electronic signal conducted:

- a. Radio waves;
- b. Microwaves;
- c. Wires;
- d. Lines;
- e. Coaxial cables;
- f. Wave guides;
- g. Fiber optics; or

h. Other conduits of communications;

(2) "Film" means:

a. Performances; or

b. Productions telecast, live or otherwise, including, but not limited to:

1. News;

2. Sporting events;

3. Plays;

4. Stories; and

5. Other literary, commercial, educational, or artistic works, in the format of a motion picture, a videotape, video disc, or other medium;

(3) "Outer-jurisdictional property" means tangible personal property, such as orbiting satellites, undersea transmission cables, which are not physically located in any particular state, that are:

a. Owned or rented by the business organization; and

b. Used in the business of:

1. Telecasting; or

2. Broadcasting;

(4) "Placed into service" means when the film is first telecast to the primary audience for which the film was created;

(5) "Radio" means:

a. Performances; or

b. Productions broadcast, live or otherwise, on radio, including, but not limited to:

1. News;

2. Sporting events;

3. Plays;

4. Stories; or

5. Other literary, commercial, educational, or artistic works, in the format of an audiotape, disc, or other medium;

(6) "Rent" means the payments or consideration such as, but not limited to, license fees provided for the broadcast or other use of television or radio programming;

(7) "Subscriber" means the individual location of the residence or other outlet which is the ultimate recipient of the transmission;

(8) “Tangible personal property” means property other than:

- a. Real estate;
- b. Film; or
- c. Radio programming; and

(9) “Telecast” means the transmission of television programming by an electronic signal conducted by:

- a. Radio waves;
- b. Microwaves;
- c. Wires;
- d. Lines;
- e. Coaxial cables;
- f. Wave guides;
- g. Fiber optics; or
- h. Other conduits of communications.

(b) Business organizations shall apportion their income to New Hampshire using the apportionment provisions contained in RSA 77-A:3 and Rev 304.02, Rev 304.03 and Rev 304.04, subject to the adjustments in (f), (g), (h), **and** ~~(i), (j) and (k)~~, below.

(c) Each episode of a series of films produced for television shall constitute a separate film notwithstanding that the series relates to the same principal subject and is produced during one or more television seasons.

(d) Each episode of a series of radio programming produced for radio broadcast shall constitute separate radio programming notwithstanding that the series relates to the same principal subject and is produced during one or more taxable periods.

(e) A film shall not be placed in service merely because it is:

- (1) Completed and therefore in a condition or state of readiness and availability for telecast;
- (2) Telecast to prospective sponsors or purchasers; or
- (3) Shown in preview before a select audience.

(f) The property factor for television and radio broadcasters shall be:

- (1) The sum of New Hampshire programming property and New Hampshire non-programming property, divided by the sum of total programming property and total non-programming property; and
- (2) The components calculated in accordance with the provisions of Rev 304.02, and in the following manner:

- a. Total non-programming property shall include all real and tangible personal property other than outer-jurisdictional and film or radio programming property owned, rented and employed by the business organization;
- b. New Hampshire non-programming property shall include all real and tangible personal property other than outer-jurisdictional and film or radio programming property owned, rented and employed by the business organization in New Hampshire;
- c. Total programming property shall be the average cost, determined as provided in Rev 304.02(j), of all outer-jurisdictional and film or radio programming property owned, rented and used by the business organization in New Hampshire;
- d. New Hampshire programming property shall be the average costs, determined as provided in Rev 304.02(j), of all outer-jurisdictional and film or radio programming property owned, rented and used by the business organization;
- e. New Hampshire programming property shall be the sum of:
 1. The average cost of outer-jurisdictional property everywhere:
 - i. Multiplied by the amount of use, in hours and minutes or other comparable form of measurement, of outer-jurisdictional property during the taxable period to transmit from New Hampshire and to receive in New Hampshire any data, voice, image, or other information; and
 - ii. Divided by the total amount of time or other comparable measurement that outer-jurisdictional property was used for transmissions everywhere;
 2. The original cost of audio or video cassettes, discs or similar media containing film or radio programming and intended for sale or rental by the business organization for home viewing or listening within New Hampshire; and
 3. To the extent the business organization licenses or otherwise permits others to manufacture or distribute audio or video cassettes, disc or other media containing film or radio programming for home viewing or listening, the license, royalty, or other fees reviewed by the business organization capitalized at a rate of 8 times the gross receipts derived there from during the taxable period; and
- f. The property factor shall be expressed by formula as follows:

Average NH Outer-Jurisdictional & Programming Property	+	Average NH Non-Outer Jurisdictional & Non-Programming Property		Total Average NH Property

Average Outer-Jurisdictional & Programming Property Everywhere	+	Average Non- Outer Jurisdictional & Non-Programming Property Everywhere	=	Total Average Everywhere Property

- (g) The payroll factor shall be calculated in accordance with Rev 304.03.

(h) The sales factor shall be the sum of New Hampshire programming sales and New Hampshire non-programming sales, divided by the sum of programming sales everywhere and non-programming sales everywhere.

(i) The sales factor components shall be calculated in the following manner:

(1) Non-programming sales, both everywhere and in New Hampshire, shall be calculated using the provisions of Rev 304.04;

(2) Programming sales everywhere shall include all receipts from advertising and the sale, rental or other use of the business organization's film or radio programming or customer lists; and

(3) New Hampshire programming sales shall equal programming sales everywhere:

a. Multiplied by the business organization's in-state audience; and

b. Divided by the business organization's total audience everywhere;

(4) The method used to determine the audience shall be used consistently to determine both in-state audience and total audience, and used consistently from year to year; and

(5) The sales factor shall be expressed by formula as follows:

NH Programming Sales	+	NH Non-Programming Sales	Total NH Sales
-----			=
-----		-----	
Programming Sales Everywhere	+	Non-Programming Sales Everywhere	Total Everywhere Sales

Rev 304.10 Adjustments Required to Apportionment Factors For Financial Institutions.

(a) ~~For purposes of this section, the following definitions shall apply:~~

(1) "Billing address" means the location indicated in the books and records of the business organization on the first day of the taxable year, or on such later date in the taxable period when the customer relationship began, as the address where any notice, statement or bill relating to a customer's account is mailed to the customer;

(2) "Borrower or credit cardholder located in New Hampshire" means:

a. An individual or business organization engaged in a trade or business which maintains its commercial domicile in New Hampshire; or

b. An individual who is not engaged in a trade or business but whose billing address is in New Hampshire;

(3) "Commercial domicile" means, for businesses organized under the laws of:

a. The United States, the place from which the trade or business is principally managed and directed; or

b. A foreign country, the Commonwealth of Puerto Rico, any territory or possession of the United States, the state of the United States, or the District of Columbia to which the greatest number of employees, as defined in Rev 301.143, are regularly connected or out of which they are working, irrespective of where the services of such employees are performed, as of the last day of the taxable year;

(4) "Credit card" means a card or other medium entitling its holder to credit by virtue of its use to purchase goods or services from businesses;

(5) "Credit card issuer's reimbursement fee" means the fee a business organization receives from a merchant's bank because one of the persons to whom the business organization has issued a credit card has charged merchandise or services to the credit card;

(6) "Finance lease" means any lease transaction, including any direct financing lease or leverage lease that meets the criteria of Financial Accounting Standards Board Statement No. 13, "Accounting for Leases" or any other lease that is accounted for as a financing by a lessor under generally accepted accounting principles which is the functional equivalent of an extension of credit and that transfers substantially all of the benefits and risks incident to the ownership of property to the lessee;

(7) "Financial institution" means:

a. Any corporation or other business entity registered under:

1. State law as a bank holding company;
2. The Federal Bank Holding Company Act of 1956, as amended; or
3. The Federal National Housing Act, as amended, as a savings and loan holding company;

b. A national bank organized and existing as a national bank association pursuant to the National Bank Act, 12 U.S.C. 21 et seq.;

c. A savings association or federal savings bank as defined in the Federal Deposit Insurance Act, 12 U.S.C. 1813(b)(1);

d. Any bank or thrift institution incorporated or organized under the laws of any state;

e. Any corporation organized under the provisions of 12 U.S.C. 611 to 631;

f. Any agency or branch of a foreign depository as defined in 12 U.S.C. 3101;

g. A production credit association organized under the Federal Farm Credit Act of 1933, all of whose stock held by the Federal Production Credit Corporation has been retired;

h. Any corporation, other than an insurance company, whose voting stock is more than 50% owned, directly or indirectly, by any person or business entity described in subsections a. through g. above;

i. A corporation or other business entity which during the current taxable period and the previous 2 taxable periods derived an average of 50% of its total gross income for financial accounting purposes from finance leases;

j. Any other person or business entity, other than an insurance company, a real estate broker, a securities dealer or other similar business entities, which derive more than 50% of their gross income excluding non-recurring and extraordinary items from activities that a person described in subsections a. through i. above is authorized to transact; and

k. Any person or business entity having more than 50% of its total gross business income derived from or attributable to the issuance and maintenance of credit cards to consumers provided that such credit card may be used by the consumer to purchase goods and services from organizations other than the card issuer;

(8) "Gross rents" means:

a. The actual sum of money or other consideration payable for the use or possession of property except:

1. Reasonable amounts payable as separate charges for water and electric service furnished by the lessor;
2. Reasonable amounts payable as service charges for janitorial services furnished by the lessor;
3. Reasonable amounts payable for storage, provided such amounts are payable for space not designated for use by and not under the control of the taxpayer; and
4. That portion of any rental payment applicable to the space subleased from the taxpayer and not used by the taxpayer;

b. Any amount payable for the use or possession of real property and tangible property whether designated as a fixed sum of money or as a percentage of receipts, profits or otherwise; and

c. Any amount payable as additional rent or in lieu of rent, such as interest, taxes, insurance, repairs or any other amount required to be paid by the terms of a lease or other arrangement, including the amount of amortization or depreciation allowed in computing the taxable income base for the taxable year of any improvement to real property made by or on behalf of the business organization which reverts to the owner or lessor upon termination of a lease or other arrangement;

(9) "Loan" means any extension of credit resulting from direct negotiations between the business organization and its customers and:

a. Includes:

1. Participation;
2. Syndications;
3. Leases treated as loans for federal income tax purposes; and
4. The purchase, in whole or in part, of such extension of credit from another business organization; and

b. Excludes:

1. Properties treated as loans under section 595 of the IRC;
2. Futures or forward contracts;
3. Options;
4. Notional principal contracts such as swaps;
5. Credit card receivables, including purchased credit card relationships;
6. Non-interest bearing balances due from depository institutions;
7. Cash items in the process of collection;
8. Federal funds sold;
9. Securities purchased under agreements to resell;
10. Assets held in a trading account;
11. Securities; and
12. Interests in a real estate mortgage investment conduit (REMIC), or other mortgage-backed or asset-backed security;

(10) “Loan secured by real property” means 50% or more of the aggregate value of the collateral used to secure a loan or other obligation, when valued at fair market value as of the time the original loan or obligation was incurred, was real property;

(11) “Merchant discount” means the fee, or negotiated discount, charged to a merchant by the business organization for the privilege of participating in a program whereby a credit card is accepted in payment for merchandise or services sold to the card holder;

(12) “Participation” means an extension of credit in which an undivided ownership interest is held on a pro rata basis in a single loan or pool of loans and the related collateral by the credit originator and any other lenders who have purchased a portion of such loan or pool of loans whether or not known to the borrower;

(13) “Person” means an individual, estate, trust, partnership, corporation and any other business entity;

(14) “Real and tangible property” means assets:

- a. On which the taxpayer may claim depreciation for federal income tax purposes;
- b. To which the taxpayer holds legal title and on which no other person may claim depreciation for federal income tax purposes or could claim depreciation if subject to federal income taxation; or
- c. That have not been acquired in lieu of, or pursuant to, a foreclosure;

(15) “Regular place of business” means an office where the business organization conducts business in a regular and systematic manner and is continuously maintained, occupied and used by employees of the business organization;

(16) "Syndication" means an extension of credit in which 2 or more persons fund the credit extension and each person is at risk at a specified:

- a. Percentage of the total extension of credit; or
- b. Dollar amount;

(17) "Taxable" means:

- a. A business organization, as defined in RSA 77-A:1, I., subject in another state to:
 - 1. A net income tax, a franchise tax measured by net income;
 - 2. A franchise tax for the privilege of doing business; or
 - 3. A corporate stock tax including a bank shares tax, a single business tax, or an earned surplus tax, or any tax which is imposed upon or measured by net income; or
- b. Another state has jurisdiction to subject the business organization to any of such taxes regardless of whether, the state does or does not impose such taxes; and

(18) "Transportation property" means:

- a. Vehicles and vessels capable of moving under their own power; and
- b. Equipment or containers attached to the vehicle or vessel.

(b) Financial institutions shall apportion their income to New Hampshire using the apportionment provisions contained in RSA 77-A:3 and Rev 304.02, Rev 304.03 and Rev 304.04, subject to the adjustments in paragraphs (c), (d) and (e), below.

(c) The property factor's components shall be calculated utilizing the following provision:

- (1) The property factor shall include only property the income or expenses of which are included, or would have been included if not fully depreciated or expensed, in the computation of the apportionable income tax base for the taxable period;
- (2) The property factor shall be the sum of the value of the real and tangible property and the intangible property components;
- (3) The real and tangible property component shall be calculated using the provision of Rev 304.02;
- (4) The intangible property component shall include the average value of the business organization's loans and credit card receivables;
- (5) Intangible property shall be determined to be located in New Hampshire when it is properly assigned to a regular place of business of the business organization within New Hampshire, based upon the preponderance of substantive contacts relating to the loans having occurred in New Hampshire;
- (6) Substantive contacts shall occur when one or more of the following activities are conducted by employees connected with, or working out of the business organization's regular place of business in New Hampshire, regardless of where the services of such employee were actually performed:

- a. Solicitation of the customer by an employee or the customer initiation of contact with the business organization at its regular place of business;
- b. Investigation of the customer's credit-worthiness and the degree of risk involved in making the particular loan;
- c. Negotiation between the employee of the business organization and the customer regarding the terms of the loan such as the:
 - 1. Amount;
 - 2. Duration;
 - 3. Interest rate;
 - 4. Frequency of repayment;
 - 5. Currency denomination; and
 - 6. Security requirements;
- d. Approval of the agreement by the employees or directors of the business organization; and
- e. Administering the account by performing services such as:
 - 1. Bookkeeping;
 - 2. Collecting payments;
 - 3. Corresponding with the customer; or
 - 4. Proceeding against the customer in the case of default;

(7) The intangible property included under paragraph (4) above, shall be valued in the following manner:

- a. Loans shall be valued at their outstanding principal balance, without regard to any reserve for bad debts;
- b. Credit card receivables shall be valued at their outstanding principal balance, without regard to any reserve for bad debts, with the exception that credit card receivables which are written-off in whole or in part for federal income tax purposes shall not be included in the principal balance to the extent of the portion that is written-off; and
- c. Loans, when written off in whole or in part, shall not be included in the total to the extent of the portion that is written off for:
 - 1. Federal income tax purposes; or
 - 2. Regulatory purposes through a specifically allocated reserve pursuant to regulatory or financial accounting guidelines;

(8) Loans properly assigned to New Hampshire shall, absent any change of material fact, remain assigned to New Hampshire for the length of the original term of the loan;

- (9) Upon completion of the original term of loans referenced in (8), above, they may be properly assigned to another state if said loans have a preponderance of substantive contact to a regular place of business there; and
- (10) Credit card receivables shall be treated as loans and subject to the provisions of (c)(6) above, for purposes of determining the location of credit card receivables.
- (d) The payroll factor shall be calculated in accordance with Rev 304.03.
- (e) The sales factor shall be calculated utilizing the following provisions in lieu of the provisions contained in Rev 304.04:
- (1) The sales factor shall be a fraction, as follows:
- a. The numerator shall be the receipts from the lease, sublease, rental or sub-rental of real property located in New Hampshire, and the lease or rental of tangible personal property, other than transportation equipment, located in New Hampshire when it is first placed in service by the lessee owned by the business organization in New Hampshire during the taxable year; and
 - b. The denominator shall be the receipts of the business organization within and without New Hampshire during the taxable period.
- (2) The sales factor numerator and denominator shall be calculated in a consistent manner from year-to-year, and include those receipts described herein which constitute income and are included in the computation of the apportionable income base for the taxable period;
- (3) Receipts from the lease or rental of transportation property owned by the business organization shall be:
- a. Included in the numerator to the extent that the property is used in New Hampshire; and
 - b. Calculated in the following manner:
 1. The amount of receipts from aircraft to be included in the numerator of New Hampshire's sales factor shall be determined by multiplying all the receipts from the lease or rental of the aircraft by a fraction, as follows:
 - (i) The numerator shall be the number of landings of the aircraft in New Hampshire; and
 - (ii) The denominator shall be the total number of landings of the aircraft;
 2. Motor vehicles shall be included in the numerator of the state in which they are registered and deemed to be used wholly within such state; and
 3. If the extent of the use of any transportation property within New Hampshire cannot be determined, the property shall be deemed to be used wholly in the state in which the property has its principal base of operations;
- (4) The numerator shall include interest and fees, or penalties in the nature of interest, from loans secured by real property if, at the time the original agreement is made, the following shall apply:

- a. The property is entirely located within New Hampshire;
 - b. The property is located both within New Hampshire and one or more other states, and more than 50% of the fair market value of the real property is located within New Hampshire; or
 - c. More than 50% of the fair market value of the real property is not located within any one state, and the borrower is located in New Hampshire;
- (5) Interest and fees or penalties in the nature of interest from loans not secured by real property shall be included in the numerator if the borrower is located in New Hampshire;
- (6) Net gains from the sale of loans, including income recorded under the coupon stripping rules of section 1286 of the IRC, shall be included in the numerator utilizing the following provisions:
- a. The amount of net gains, but not less than zero, from the sale of loans secured by real property included in the numerator shall be determined by multiplying such net gains by a fraction, as follows:
 1. The numerator shall be the amount included in the numerator of the sales factor pursuant to (4) above; and
 2. The denominator shall be the total amount of interest and fees, or penalties in the nature of interest, from loans secured by real property;
 - b. The amount of net gains, but not less than zero, from the sale of loans not secured by real property included in the numerator shall be determined by multiplying such net gains by a fraction, as follows:
 1. The numerator shall be the amount included in the numerator of the sales factor pursuant to (5) above; and
 2. The denominator shall be the total amount of interest and fees, or penalties in the nature of interest, from loans not secured by real property;
- (7) The numerator shall include interest and fees or penalties in the nature of interest from credit card receivables and receipts from fees, such as annual fees, charged to cardholders if the billing address of the cardholder is in New Hampshire;
- (8) The amount of net gains, but not less than zero, from the sale of credit card receivables included in the numerator shall be determined by multiplying such net gains by a fraction, as follows:
- a. The numerator shall be the amount included in the numerator of the sales factor pursuant to (7) above; and
 - b. The denominator shall be the business organization's total amount of interest and fees or penalties in the nature of interest from credit card receivables and fees charged to card holders;
- (9) The numerator shall include all credit card issuer's reimbursement fees multiplied by a fraction, as follows:

- a. The numerator shall be the amount included in the numerator of the sales factor pursuant to (7) above; and
 - b. The denominator shall be the business organization's total amount of interest and fees or penalties in the nature of interest from credit card receivables and fees charged to card holders;
- (10) The numerator shall include receipts from merchant discount if the commercial domicile of the merchant is in New Hampshire;
- (11) Receipts from merchant discount, referenced in (10), above, shall:
- a. Be computed net of any cardholder charge backs; and
 - b. Not be reduced by any interchange transaction fees or by any issuer's reimbursement fees paid to another for charges made by its card holders;
- (12) The numerator shall include receipts from loan servicing fees utilizing the following provisions:
- a. For loan servicing fees derived from loans secured by real property, the total amount of such fees shall be multiplied by a fraction, as follows:
 - 1. The numerator shall be the amount included in the numerator of the receipts factor pursuant to (4) above; and
 - 2. The denominator shall be the total amount of interest and fees, or penalties in the nature of interest, from loans secured by real property;
 - b. For loan servicing fees derived from loans not secured by real property, the total amount of such fees shall be multiplied by a fraction, as follows:
 - 1. The numerator shall be the amount included in the numerator of the receipts factor pursuant to (9) above; and
 - 2. The denominator shall be the total amount of interest and fees, or penalties in the nature of interest, from loans not secured by real property; and
 - c. For circumstances in which the business organization receives loan servicing fees for servicing either the secured or the unsecured loans of another business organization, the numerator shall include such fees if the borrower is located in New Hampshire;
- (13) The numerator shall include receipts from services not otherwise apportioned under this section if the service is performed:
- a. In New Hampshire; or
 - b. Everywhere and a greater proportion of the income-producing activity is performed in New Hampshire based on cost of performance;
- (14) The sales factor shall include interest, dividends, net gains not less than zero and other income from investment assets and activities and trading assets and activities in accordance with the following provisions:
- a. Investment assets and activities and trading assets and activities shall include, but are not limited to the following:

1. Investment securities;
 2. Trading account assets;
 3. Federal funds;
 4. Securities purchased and sold under agreements to resell or repurchase;
 5. Options;
 6. Future contracts;
 7. Forward contracts;
 8. Notional principal contracts such as swaps;
 9. Equities; and
 10. Foreign currency transactions;
- b. The sales factor shall include the amount by which:
1. Interest from federal funds sold and securities purchased under resale agreements exceeds interest expense on federal funds purchased and securities sold under repurchase agreements; and
 2. Interest, dividends, gains and other income from trading assets and activities, including but not limited to assets and activities in the matched book, in the arbitrage book, and foreign currency transactions, exceed amounts paid in lieu of interest, amounts paid in lieu of dividends, and losses from such assets and activities;
- c. The numerator shall include interest, dividends, net gains, but not less than zero and other income utilizing the following provisions for:
1. Investment assets and activities and from trading assets and activities described in a. above, the total amount of such income shall be multiplied by a fraction, as follows:
 - (i) The numerator shall be the average value of such assets which are properly assigned to a regular place of business of the business organization within New Hampshire; and
 - (ii) The denominator shall be the average value of all such assets;
 2. Federal funds sold and purchased and from securities purchased under resale agreements and securities sold under repurchase agreements described in b. above, the amount of excess interest shall be multiplied by a fraction, as follows:
 - (i) The numerator shall be the average value of federal funds sold and securities purchased under agreements to resell which are properly assigned to a regular place of business of the business organization within New Hampshire; and

(ii) The denominator shall be the average value of all such funds and such securities; and

3. Trading assets and activities described in c. above, excluding amounts described in 1. or 2., above, the amount of the excess income shall be multiplied by a fraction, as follows:

(i) The numerator shall be the average value of such trading assets which are properly assigned to a regular place of business of the business organization within New Hampshire; and

(ii) The denominator shall be the average value of all such assets;

d. For purposes of this section, average value shall be determined using the provisions of Rev 304.02(j);

e. The modified procedure may be:

~~i.1.~~ Required by the commissioner in lieu of using the provisions enumerated in c. above, in accordance with RSA 77-A:3, II, (a); or

~~ii.2.~~ Requested by the business organization for all subsequent returns utilizing the provisions of Rev 304.05;

f. The modified procedure shall ~~have~~ ***be calculated as follows:***

~~i.1.~~ The numerator shall include interest, dividends, net gains, but not less than zero and other income utilizing the following provisions for:

(i) Investment assets and activities and from trading assets and activities described in a. above, the total amount of such income shall be multiplied by the following fraction:

i. A numerator consisting of the gross income from such assets and activities assigned to a regular place of business of the taxpayer within New Hampshire; and

ii. A denominator consisting of the gross income from all assets and activities;

(ii) Federal funds sold and purchased from securities purchased under resale agreements, and securities sold under repurchase agreements described in b., above, the amount of excess interest shall be multiplied by the following fraction:

i. A numerator consisting of the gross income from funds and securities assigned to a regular place of business of the business organization within New Hampshire; and

ii. A denominator consisting of the gross income from all such funds and such securities; and

(iii) Trading assets and activities described in c. above, excluding amounts described in 1. or 2. above, the amount of the excess income shall be multiplied by the following:

- i. A numerator consisting of the gross income from trading assets and activities assigned to a regular place of business of the business organization within New Hampshire; and
 - ii. A denominator consisting of the gross income from all such assets and activities;
- g. Investment asset or activity, or trading asset or activity shall be presumed to occur at the commercial domicile of the business organization;
- h. The business organization may rebut the presumption in g. above, by demonstrating that:
- 1. The day-to-day decisions regarding the asset or activity occurred at a regular place of business outside New Hampshire; and
 - 2. Where the day-to-day decisions regarding an investment asset or activity or trading asset or activity occur at more than one regular place of business, one of which is in New Hampshire, that the investment or trading policies or guidelines concerning such decisions were made outside New Hampshire; and
- i. All receipts assigned under this section to a state where the taxpayer is not taxable shall be included in the numerator of the sales factor, if the business organization's commercial domicile is in New Hampshire; and
- (175) The numerator shall include receipts from the sales of tangible personal property not otherwise apportioned under this section utilizing the provisions of Rev 304.043.

Rev 304.11 Adjustments Required To Apportionment Factors For Transportation Industries Other Than Airlines, Communication And Energy Companies.

(a) ~~For purposes of this section, the following definitions shall apply:~~

- (1) "Commercial transportation company" means any business organization:
 - a. Other than an airline, communication or energy company, that is paid to transport packages, materials, equipment, freight, mail or other products from one point to another for a customer; or
 - b. That transports individuals for a fee, other than the organization's employees, from one point to another;
- (2) "Mobile payroll" means the total compensation for vehicle drivers and any service personnel such as tour guides, conductors or other attendants determined in accordance with Rev 304.03(a);
- (3) "Mobile property" means any vehicles used by a commercial transportation company for transporting:
 - a. Passengers;
 - b. Packages;
 - c. Materials;

- d. Equipment;
- e. Freight;
- f. Mail or other products; or
- g. Any related equipment that generally moves from location to location within the organization's transportation system;

(4) "Non-mobile payroll" means the total compensation determined in accordance with Rev 304.03 for all employees of the business organization, other than vehicle drivers and any service personnel;

(5) "Non-mobile property" means:

- a. Fixed tangible personal property used in the operation of a commercial transportation company; and
- b. Located at a particular place of business;

(6) "Non-transportation income" means all receipts of the business organization other than those classified as transportation income;

(7) "Revenue miles" means the distance passengers, packages, materials, equipment, freight, mail or other products were transported for a fee; and

(8) "Transportation income" means:

- a. The receipts from transporting passengers, packages, materials, equipment, freight, mail or other products; and
- b. The sale of products or services associated with such transportation such as food, beverages, liquor, magazines or insurance for loss or damage.

(b) Commercial transportation companies shall apportion their income to New Hampshire ~~state~~ using the apportionment provisions contained in RSA 77-A:3 and Rev 304.02, Rev 304.03 and Rev 304.04, subject to the adjustments in (c), (d) and (e), below.

(c) The property factor's components shall be calculated utilizing the following provisions:

(1) The property factor shall be the sum of average New Hampshire mobile property and average New Hampshire non-mobile property, divided by the sum of average mobile property everywhere and average non-mobile property everywhere;

(2) Average New Hampshire non-mobile property, and average non-mobile property everywhere shall be calculated using the provisions of Rev 304.02;

(3) Average mobile property everywhere shall include the average ~~value~~~~cost~~, as provided in Rev 304.02 (j), of all mobile property owned, rented and used by the business organization;

(4) Average New Hampshire mobile property shall equal average mobile property everywhere:

- a. Multiplied by New Hampshire revenue miles; and

b. Divided by total revenue miles; and

(5) The property factor shall be expressed by formula as follows:

$$\begin{array}{rclcl}
 \text{Average Mobile Property} & & \text{NH Revenue Miles} & & \\
 \text{Everywhere} & \times & \frac{\text{-----}}{\text{Total Revenue Miles}} & = & \text{Average NH Mobile Property} \\
 \\
 \text{Average NH Mobile Property} & + & \text{Average NH Non-Mobile Property} & & \text{Total Average NH Property} \\
 \text{-----} & & & = & \text{-----} \\
 \text{Average Mobile Property} & + & \text{Average Non-Mobile Property Everywhere} & & \text{Total Average Property Everywhere}
 \end{array}$$

(d) The payroll factor's components shall be calculated utilizing the following provisions:

(1) The payroll factor shall be the sum of New Hampshire mobile payroll and New Hampshire non-mobile payroll, divided by the sum of mobile payroll everywhere and non-mobile payroll everywhere;

(2) New Hampshire non-mobile payroll, and non-mobile payroll everywhere shall be calculated using the provisions of Rev 304.03;

(3) Mobile payroll everywhere shall include the total compensation of the business organization for vehicle drivers and any service personnel such as tour guides, conductors or other attendants;

(4) New Hampshire mobile payroll shall equal mobile payroll everywhere:

a. Multiplied by New Hampshire revenue miles;

b. Divided by total revenue miles; and

(5) The payroll factor shall be expressed by formula as follows:

$$\begin{array}{rclcl}
 \text{Mobile Payroll} & & \text{NH Revenue Miles} & & \\
 \text{Everywhere} & \times & \frac{\text{-----}}{\text{Total Revenue Miles}} & = & \text{NH Mobile Payroll} \\
 \\
 \text{NH Mobile Payroll} & + & \text{NH Non-Mobile Payroll} & & \text{Total NH Payroll} \\
 \text{-----} & & & = & \text{-----} \\
 \text{Mobile Payroll} & + & \text{Non-Mobile Payroll Everywhere} & & \text{Total Payroll Everywhere}
 \end{array}$$

(e) The sales factor's components shall be calculated utilizing the following provisions:

- (1) The sales factor shall be the sum of New Hampshire transportation income and New Hampshire non-transportation income, divided by the sum of transportation income everywhere and non-transportation income everywhere;
- (2) New Hampshire non-transportation income and non-transportation income everywhere shall be calculated using the provisions of Rev 304.04;
- (3) Transportation income everywhere shall include the total transportation income of the business organization;
- (4) New Hampshire transportation income shall equal transportation income everywhere:
 - a. Multiplied by New Hampshire revenue miles; and
 - b. Divided by total revenue miles; and
- (5) The sales factor shall be expressed by formula as follows:

$$\begin{array}{rclcl}
 \text{Transportation} & & \text{NH Revenue Miles} & & \\
 \text{Income Everywhere} & \times & \text{-----} & = & \text{NH Transportation} \\
 & & \text{Total Revenue Miles} & & \text{Income} \\
 \\
 \text{NH Transportation} & & \text{NH Non-Transportation} & & \text{Total NH Sales} \\
 \text{Income} & + & \text{Sales} & & \\
 \text{-----} & & & = & \text{-----} \\
 \text{----} & & & & \text{--} \\
 \text{Transportation Income} & & \text{Non-Transportation Sales} & & \text{Total Everywhere} \\
 \text{Everywhere} & + & \text{Everywhere} & & \text{Sales}
 \end{array}$$

(f) The business organization shall maintain the records necessary to substantiate the revenue miles and the receipts for all passengers, packages, materials, equipment, freight, mail or other products when the transportation service commences or terminates in New Hampshire.

Readopt with amendment Rev 305, effective 8-25-06 (Document #8709), to read as follows:

PART Rev 305 COMPUTATION OF TAX, ESTIMATED TAX, PAYMENTS AND REFUNDS

Rev 305.01 Payments of Liabilities.

(a) Where a business organization has a payment due with any document, such payment shall be submitted:

- (1) With the document when the business organization is not:
 - a. Statutorily required to participate in the electronic funds transfer program; or
 - b. Voluntarily participating in the electronic funds transfer program ~~provided in accordance with~~ **by** Rev 2500; or
- (2) Separately from the document by means of an electronic funds transfer as provided RSA 21-J:3, XXI and Rev 2500 in instances where the business organization is:
 - a. Statutorily required to participate in the program; or

b. Voluntarily participating in the program in accordance with Rev 2500.

(b) A business organization with a tax liability under one dollar shall not be required to remit the payment, however, the return shall be filed.

Rev 305.02 Estimated Taxes.

(a) Every business organization having an annual projected tax liability in excess of \$200 shall:

(1) File the appropriate estimated quarterly tax payment form for the appropriate type of entity; and

(2) Make 4 payments of 25% on or before the fifteenth day of the tax year's:

- a. Fourth month;
- b. Sixth month;
- c. Ninth month; and
- d. Twelfth month.

(b) When an annual projected tax liability in excess of \$200 is determined in a quarter subsequent to the first quarter, the estimated tax payment shall equal the cumulative amount payable as of that quarter as if the liability had been determined in the first quarter.

(c) Estimated tax liabilities of a ~~water's edge~~ combined group shall be:

- (1) Determined for the combined group as a whole; and
- (2) Paid by the principal New Hampshire business organization in accordance with the provisions of (a) and (b) above.

Rev 305.03 Application of an Overpayment.

(a) An overpayment of tax, verified by the department, shall be treated in the following sequence:

- (1) Applied to offset any other tax liability of the business organization or the ~~water's edge~~ combined group, in accordance with RSA 21-J:28-a, IV;
- (2) Refunded to the taxpayer;
- (3) Credited to the estimated tax for the following year if indicated by the business organization or the ~~water's edge~~ combined group; or
- (4) A combination of (a)(2) and (a)(3), above, if indicated by the business organization or the ~~water's edge~~ combined group.

(b) A business organization not required to file a tax return, but incorrectly files and makes a payment of estimated taxes, shall request a refund in writing:

(1) To:

New Hampshire Department of Revenue Administration
~~Documents Processing Division~~ **Central Tax Services**

PO Box ~~637~~**3306**
Concord, NH 03302-~~0637~~**3306**; and

(2) Which includes the following:

- a. Name and mailing address;
- b. ~~Federal~~**Taxpayer** identification number; and
- c. The type of entity for the business organization;
- d. The reason the estimated tax payment was not required to be made;
- e. The tax year for which the estimated tax payment was made;
- f. The amount of the estimated tax payment; and
- g. Preparer's dated signature.

Rev 305.04 Understatement of Estimated Taxes.

(a) In determining the applicability of the exception described in RSA 21-J:32, IV(c)(1) the following shall be determined:

- (1) The amount of income and deductions for the calendar months in the taxable period preceding the estimated due date as of which the determination is made; and
- (2) Allowed expenses if they are properly accrued or paid based upon the business organization's method of accounting, such as in instances where a business organization:
 - a. Distributes year-end bonuses to its employees;
 - b. Does not determine the amount of the bonuses until the last month of the taxable period; and
 - c. Accrues the appropriate liability only in the last quarter of the taxable period.

(b) Where the income of a business organization is derived from business activity in which the production, purchase or sale of merchandise is an income producing factor requiring the use of inventories and the business organization wishes to use the exception described in RSA 21-J:32, IV(c)(1), it shall determine the cost of goods sold:

- (1) For the quarter in accordance with generally accepted accounting principles; or
- (2) In the same proportion to sales for such quarter as it is to sales for the entire taxable period.

(c) Business organizations which are includible in a combined group shall:

- (1) Determine their compliance with RSA 77-A:6, II and Rev 305.02(c) for the group as a whole; and
- (2) Apply the penalties for underpayment of estimated taxes and applicable exceptions provided in RSA 21-J:32 to the combined group as if it were a single business organization.

PART Rev 306 CREDITS ALLOWABLE AGAINST TAX LIABILITY

Readopt with amendment Rev 306.01, effective 8-25-06 (Document #8709), to read as follows:

Rev 306.01 ~~Taxation of Insurance~~ ***Premium Tax Credit Companies Under RSA 400-A.***

(a) A business organization subject to the tax imposed under RSA 400-A shall be allowed a credit against its business profits tax liability for the premium tax liability paid under § RSA 400-A:32, I, and RSA 400-A:33.

(b) The credit shall:

- (1) Be determined on the basis of the actual tax liability included on the business organization's reports required under RSA 400-A:32, I, and
- (2) Not be determined upon estimated taxes required by RSA 400-A:32, II.

(c) Other fees or charges assessed by the New Hampshire department of insurance shall not be allowed as a credit against the business profits tax.

Readopt with amendment Rev 306.02, effective 8-25-06 (Document #8709), to read as follows:

Rev 306.02 Community Development Finance Authority Investment Tax Credit.

(a) A business organization qualified for the credit under RSA 162-L:10 shall be allowed a credit against its business profit tax liability for the amount available based on its contributions.

(b) Any amount of the investment tax credit applied first against the business enterprise tax shall be considered:

- (1) Business enterprise tax paid; and
- (2) Not available as a credit against the business profits tax except to the extent that it is a credit against the business enterprise tax.

(c) A copy of the credit awarded from the New Hampshire community development finance authority shall be attached to the tax return.

Readopt with amendment Rev 306.03, effective 8-25-06 (Document #8709), to read as follows:

Rev 306.03 ~~Community Reinvestment and Opportunity~~ ***Economic Revitalization Zone Tax Credits.***

(a) ~~Any amounts of community reinvestment and opportunity zone tax credits determined under RSA 162-N:7 and allowed against the business enterprise tax shall be considered:~~ ***A business organization qualified for the credit under RSA 162-N shall be allowed a credit against its business profits tax liability for the amount available as determined in accordance with RSA 162-N:6, subject to the limitation provided in RSA 162-N:5.***

- (1) ~~Business enterprise tax paid; and~~
- (2) ~~Available as a credit against the business profits tax to the extent that it is a credit against the business enterprise tax.~~

(b) ~~A copy of the credit awarded from the New Hampshire department of resources and economic development shall be attached to the tax return.~~ ***Any unused amount of the credit shall be allowed as a***

credit against the business organization's business enterprise tax and shall be considered business enterprise tax paid.

(c) Any unused portion of the credit or an portion of the credit limited pursuant to RSA 162-N:5, may be carried forward and allowed against business profits tax or business enterprise tax due for 5 taxable periods from the taxable period in which the tax was paid.

(d) Any carried-forward amount of the credit applied first against the business enterprise tax shall be considered:

(1) Business enterprise tax paid; and

(2) Not available as a credit against the business profits tax except to the extent that it is a credit against the business enterprise tax.

Readopt with amendment Rev 306.04, effective 8-25-06 (Document #8709), to read as follows:

Rev 306.04 Timing of Credit Where Tax Years Differ. Where the tax period for the business profits tax is different than the tax periods for the taxes referred to in Rev 306.01, a business organization shall be allowed the credit for the tax period that ends within the tax period for business profits tax purposes.

Readopt with amendment Rev 306.05 and Rev 306.06, effective 8-25-06 (Document #8709), to read as follows:

Rev 306.05 Excess Credits.

(a) Credits provided by RSA 400-A shall:

- (1) Be used to offset the current year business profits tax liability;
- (2) Not be refundable; and
- (3) Not be carried forward or backward to another taxable period.

(b) Credits provided by RSA 77-E shall be:

- (1) Used to offset the current year business profits tax liability; ~~and~~
- (2) Carried forward to the subsequent 5 taxable periods when the credits *are accumulated during tax periods ending before December 31, 2014 and* exceed the current year business profits tax liability; ~~and~~
- (3) *Carried forward to the subsequent 10 taxable periods when the credits are accumulated during tax periods ending on or after December 31, 2014 and exceed the current year business profits tax liability.*

Rev 306.06 Application of Credits to Business Organizations Included in a ~~Water's Edge~~ Combined Group.

(a) The credits enumerated in RSA 77-A:5 and ~~Rev 305~~ *this section* shall apply against the business profits tax liability of the individual member of the ~~water's edge~~ combined group, as calculated in (b) below.

(b) To determine its business profits tax liability, the individual member of the combined group shall:

(1) Determine a combined nexus group denominator for the property, payroll, and sales factors by adding the property, payroll and sales factor numerators of the individual members of the combined group subject to tax under RSA 77-A;

(2) Determine an individual apportionment percentage for each member of the combined group subject to tax under RSA 77-A by dividing such member's individual New Hampshire property, payroll and sales factor numerators by the combined nexus group denominators determined in (1) above, *dividing the total by 3*; and

(3) Apply the individual apportionment percentage, determined in (b)(2), above, to the business profits tax liability of the ~~water's edge~~ combined group as determined in accordance with the provisions of RSA 77-A.

Readopt with amendment Rev 306.07, effective 11-21-12 (Document #10231), to read as follows:

Rev 306.07 Education Tax Credit.

(a) A business organization or business enterprise approved for the education tax credit under RSA 77-G and Rev 3203.03 shall be allowed a credit against its business profits tax liability in the amount reported on the Form ED-04, "~~e~~*Education T*~~ax~~ *C*~~redit~~ *S*~~cholarship R~~*ceipt.*"

(b) Any amount of the education tax credit applied against the business enterprise tax liability shall not be considered taxes paid pursuant to RSA 77-E for purposes of a credit against the business profits tax liability in accordance with RSA 77-A:5, X.

(c) Any unused education tax credit not applied against the business enterprise tax liability may be used against the business profits tax liability.

(d) Any education tax credit not utilized to offset the business enterprise tax liability or business profits tax liability incurred for the same tax year for which the credit was granted cannot be carried forward.

(e) A copy of Form ED-04, education tax credit scholarship receipt, as required under Rev 3204.02(c), shall be attached to the tax return.

Readopt with amendment Rev 307.01 through Rev 307.07, effective 8-25-06 (Document #8709), to read as follows:

PART Rev 307 RETURNS, DECLARATIONS, AND EXTENSIONS

Rev 307.01 Uniform Filing Information.

(a) Returns, extensions and declarations shall be considered timely filed pursuant to Rev 2904.03.

(b) Returns filed after the prescribed filing date defined in RSA 77-A:1, VII, shall be subject to interest prescribed in RSA 21-J:28 and penalties prescribed in RSA 21-J:31 and 21-J:33.

(c) Business organizations failing to receive tax forms from the department shall not be relieved of their obligation to prepare and file a timely return, declaration, or extension request.

(d) A business organization or member of a combined group failing to attach or submit state or federal schedules or forms with their business profits tax return as required by Rev 307 shall be:

(1) Deemed to have failed to file a return as required under RSA 77-A:6; ~~and~~

(2) Subject to any penalties provided by law; *and*

(3) ***Denied any refund or credit carryover request related to the incomplete return.***

(e) All returns, declarations or other documents containing monetary values filed with the department may be prepared by rounding off to the nearest whole dollar.

(f) A business organization, other than a single member entity, electing under the U.S. Department of the Treasury's Treasury Decision 8697 to be taxed as a corporation or partnership for federal income tax purposes shall:

(1) Comply with all of the federal income tax regulations relating to such election;

(2) File its New Hampshire business profits tax and business enterprise tax returns based on the entity type selected for federal income tax purposes; and

(3) Attach:

a. A copy of ~~f~~Federal Form 8832 if required to be filed with the *U.S.* Internal Revenue Service; or

b. A statement to the New Hampshire return indicating the business organization has accepted the federal default treatment of being taxed as a partnership.

(g) A single member entity, such as a single member limited liability company, electing for federal income tax purposes the provisions under the U.S. Department of the Treasury's Treasury Decision 8697 shall:

(1) Not include the income or expenses of the entity within the member's business profits tax return as provided under RSA 77-A:1, I; and

(2) File its business tax returns using:

a. Form NH 1120, "Corporate "Business Profits Tax Return", if the member is a corporation;

b. Form NH 1040, "Proprietorship "Business Profits Tax Return", if the member is an individual;

c. Form NH 1065, "Partnership "Business Profits Tax Return", if the member is a partnership; ~~or~~

d. Form NH 1041, "Fiduciary "Business Profits Tax Return", if the member is a trust; *or*

e. Form NH 1120-WE, Combined "Business Profits Tax Return", if the member is part of a combined group.

(h) When a single member limited liability company commences business activities *in* New Hampshire, and the business organization does not have a ~~federal~~**taxpayer** employer identification

number, the single member limited liability company shall request an identification number ~~from the department's document processing division~~ **at least 30 days prior to filing any tax documents with the department**, using Form DP-200, "Request For **Department** Identification Number (DIN)," for use in filing all its tax documents with the department.

Rev 307.02 Corporate Returns and Declarations.

(a) Regular corporations, except S corporations, qualified subchapter S subsidiaries, members of a combined group conducting a unitary business, and members of an affiliated group filing a federal consolidated income tax return, shall:

- (1) Report their business activity using Form NH-1120, ~~"Corporate Business Profits Tax Return"~~; and
- (2) Attach a clear and legible copy of pages one through **45 and federal Form 1125-A** of their federal corporation income tax return as filed with the **United States** Internal Revenue Service with schedules supporting totals included on any specific line of such federal return.

(b) S corporations and qualified subchapter S subsidiaries, except members of a combined group conducting a unitary business, shall:

- (1) Report their business activity using Form NH-1120 accompanied by Form DP-120, "Computation of S Corporation Gross Business Profits", schedule showing the adjustments required by Rev 302.01;
- (2) Attach **a clear and legible copy of pages one through 45 and federal Form 1125-A** of their federal income tax return **as filed with the United States Internal Revenue Service** with ~~supporting~~ **schedules supporting totals included on any specific line of such federal return.**

(c) Regular corporations, except members of a combined group, that are members of an affiliated group filing a federal consolidated return shall:

- (1) Comply with the uniform standards for forms described in Rev 2904.078;
- (2) Report their business activity using Form NH-1120 accompanied by a schedule adjusting the "separate taxable income" as that term is used in Treasury Regulation 1.1502-12 to the taxable income of a separate nonaffiliated corporation;
- (3) Attach a clear and legible copy of pages one through **45 and federal Form 1125-A** of the federal consolidated income tax return with the consolidating schedules as filed with the **United States** Internal Revenue Service; and
- (4) Attach a federal ~~f~~Form 851 to the return.

(d) Associations or other business organizations, except members of a combined group conducting a unitary business, required to file a federal corporate tax return shall:

- (1) Report their business activity using Form NH-1120 ~~"Corporate Business Profits Tax Return"~~; and
- (2) Attach a clear and legible copy of pages one through **45** of their **federal** corporation income tax return as filed with the **United States** Internal Revenue Service with schedules supporting totals ~~included or reported~~ **included** on any specific line of such federal return.

(e) Single member limited liability companies required to file a corporate ~~business profits tax~~ return under the provision of Rev 307.01(g) (2) shall attach a clear and legible copy of pages one through ~~45 of a proforma corporation~~ **the federal corporate income tax return as filed with the United States Internal Revenue Service and detailed with schedules for each entity** supporting totals ~~included~~ ~~incorporated~~ on any specific line of such federal return.

(f) Corporate business organizations required to pay estimated taxes as provided in RSA 77-A:6, II shall file Form NH-1120-ES, "Estimated Corporate ~~and Combined Group Business Tax Quarterly Payment Form~~" **quarterly payment form** with payment on or before the 15th day of the fourth, sixth, ninth and twelfth months of the taxable period to which they relate.

Rev 307.03 Partnership Returns and Declarations.

(a) Partnerships or other business organizations that are required to file a federal partnership return, except members of a combined group conducting a unitary business, shall:

(1) Report their business activity **by** filing Form NH-1065, "~~Partnership Business Profits Tax Return~~" **accompanied by Form DP-120-P, "Computation of Partnership Gross Business Profits"**; and

(2) Attach a clear and legible copy of:

a. ~~P~~pages one through **45 and federal Form 1125-A** of the federal partnership return as filed with the **United States** Internal Revenue Service; and

b. ~~S~~schedules supporting any total amount included on any specific line of such federal return.

(b) Partnerships not required under **United States** procedures to file a partnership return or that report their pro-rata share of the partnership's income or expense on their own federal individual return shall:

(1) File the business activity of the partnership at the partnership level on Form NH-1065, "~~Partnership Business Profits Tax Return~~" **accompanied by Form DP-120-P**; and

(2) Attach a clear and legible copy of the schedules included in the partner's individual federal income tax return.

(c) Single member limited liability companies required to file a partnership business profits tax **return** under Rev 307.01(g) (2) shall attach a clear and legible copy of pages one through ~~4 5 of a proforma partnership~~ **the federal income tax return as filed with the United States Internal Revenue Service and with detailed** schedules supporting totals ~~included~~ ~~incorporated~~ on any specific line of such federal return.

(d) Partnership business organizations required to pay estimated taxes as provided in RSA 77-A:6, II shall file Form NH-1065-ES "Estimated Partnership Business Tax" ~~Quarterly Ppayment Fform and Instructions~~, **with** payment on or before the 15th day of the fourth, sixth, ninth and twelfth month of the taxable period to which they relate.

Rev 307.04 Proprietorship Returns and Declarations.

(a) Proprietors, except members of a combined group conducting a unitary business, shall:

- (1) Report their business activity by filing Form NH-1040, ~~“Proprietorship Business Profits Tax Return”~~; and
 - (2) Attach a clear and legible copy *of the following applicable schedules or forms*, as filed with the *United States* Internal Revenue Service *with* federal ~~Form~~ 1040, ~~of the applicable following schedules or forms~~:
 - a. Schedule C, Profit or ~~(Loss)~~ From Business ~~or Profession~~;
 - b. Schedule D, Capital Gains and Losses;
 - c. Schedule E, Supplemental Income *and Loss Schedule*;
 - d. *Federal* Form 4797, ~~Gains and Losses From Sales or Exchanges of Assets Used in Trade or Business Property~~;
 - e. *Federal* Form 6252, ~~Computation of Installment Sale Income~~; ~~or and~~
 - f. Any other *federal* form required by the *United States* Internal Revenue Service.
- (b) Married proprietors filing a federal individual income tax return jointly shall:
- (1) Not file a New Hampshire individual business profits tax return jointly or offset the profit and losses of each proprietor;
 - (2) Report ~~his or her~~ *their* respective gross business profits, additions and deductions, and taxable business profits using ~~the appropriate column of~~ Form NH-1040;
 - (3) Not divide the income, expenses, additions and deductions of a single proprietorship between the 2 spouses;
 - (4) Calculate ~~his or her~~ *their* respective:
 - a. Apportionment factors; and
 - b. Business profits tax; *and*
 - ~~(5) Combine the 2 liabilities to make a single remittance; and~~
 - ~~(6) Make all estimated payments as a single remittance~~ using the names and social security numbers as shown on the business profits tax return as filed.
- (c) Individuals who, for federal income tax purposes, report a pro-rata share of partnership income and expenses shall:
- (1) Not include such items in their business profits tax returns; and
 - (2) Follow the provisions of Rev 307.03(b) in reporting such income for state tax purposes.
- (d) Proprietorship business organizations required to pay estimated taxes, as provided in RSA 77-A:6, II, shall file Form NH-1040-ES “Estimated ~~Fiduciary~~ *Proprietorship* Business Tax” ~~Quarterly Payment Form~~, with payment on or before the 15th day of the fourth, sixth, ninth, and twelfth months of the taxable period to which they relate.
- (e) Spouses jointly owning rental property shall:

(1) Be presumed to be a single proprietorship subject to the \$50,000 minimum filing requirement provided in RSA 77-A:6, I; and

(2) Divide the income derived from such property among more than one proprietorship for purposes of determining the filing requirements if they can demonstrate to the department, by a preponderance of the evidence, that more than one separate and distinct proprietorship exists.

(f) Single member limited liability companies required to file a proprietorship business profits tax *return* under Rev 307.01(g)(2) shall attach:

~~(1) A~~ *a* clear and legible copy of the individual federal income tax schedules referred to in (a)(2) above, relating to the single member limited liability company *and detailed*; ~~and~~

~~(2) S~~ schedules supporting totals ~~included~~ *incorporated* on any specific line of such federal schedule.

(g) When a taxpayer dies during the tax year, or during the filing period following the end of the tax year but before the tax return has been filed, a return shall be filed:

(1) By the executor, administrator, or the person who succeeds to ownership of the entity filing the proprietorship return; and

(2) Accompanied by Form NH-1310, "Statement of Claimant to Refund Due *a* Deceased Taxpayer"; if a refund is due a deceased taxpayer.

Rev 307.05 Fiduciary Returns and Declarations.

(a) Trusts, estates, or other fiduciary-type organizations, except members of a combined group conducting a unitary business, shall report their business activity *by* filing Form NH-1041, ~~"Fiduciary Business Profits Tax Return"~~.

(b) Single member limited liability companies required to file a Form NH 1041, ~~"Fiduciary Business Profits Tax Return"~~, under the provision of Rev 307.01(g)(2)(~~d~~) shall attach:

~~(1) A~~ *a* clear and legible copy of the ~~proforma~~ federal *fiduciary* income tax *return as filed with the United States Internal Revenue Service and detailed* schedules ~~referred to in~~ 307.04(a)(2) relating to the single member limited liability company; ~~and~~

~~(2) Schedules~~ supporting totals ~~included~~ *incorporated* on any specific line of such federal schedule.

(c) Fiduciary business organizations required to pay estimated taxes as provided in RSA 77-A:6, II shall file Form NH-1041-ES, "Estimated Fiduciary Business Tax" ~~Quarterly Payment Form~~, with payment on or before the 15th day of the fourth, sixth, ninth, and twelfth month of the taxable period to which they relate.

Rev 307.06 Miscellaneous Business Organizations.

(a) Any business organization conducting business activity within New Hampshire not falling within the parameters of Rev 307.01 through *Rev* 307.05 or *Rev* 307.07 shall file:

(1) Form NH-1120, ~~"Corporation Business Profits Tax Return"~~; and

- (2) A statement of income and expenses using provisions of the IRC for corporations in effect for business profits tax purposes for the taxable period.
- (b) A business profits tax return required by paragraph (a), above, shall be filed on or before the 15th day of the third month following the close of the business organization's taxable period.
- (c) Declarations of estimated taxes shall follow the provisions of Rev 307.02(f).

Rev 307.07 Members of a Combined Group.

- (a) The principal New Hampshire business organization shall file a combined return on behalf of all members of a combined group by:
 - (1) Complying with the uniform standards for forms described in Rev 2900**4.08**;
 - (2) Filing Form NH-1120-WE, ~~“Combined Business Profits Tax Return”~~ with all required schedules regardless of the composition of the combined group; and
 - (3) Attaching a clear and legible copy of ~~the~~:
 - a. Pages one through **45 and federal Form 1125-A** of the federal consolidated income tax return(s) with the consolidating schedules as filed with the *United States* Internal Revenue Service when members of the group are included in a federal consolidated income tax return; and
 - b. Pages one through **45 and federal Form 1125-A** of the federal income tax return(s) as filed with the *United States* Internal Revenue Service **and schedules supporting totals included on any specific line of such federal return**, when members of the group are not included in a federal consolidated income tax return described in (a) above.
- (b) The designated principal New Hampshire business organization, as described in Rev 301.254 shall notify the commissioner of any change in the status or composition of the combined group by attaching a statement to each combined return when a change occurs specifying the changes taken place since the previous taxable period.
- (c) All transactions between business organizations included in the combined return shall be eliminated rather than offset for purposes of income, expenses and apportionment factors.
- (d) A combined return shall be filed using the taxable period of the principal New Hampshire business organization.
- (e) Any member of the group not having the same taxable period as the principal New Hampshire business organization shall convert its income and expenses to the taxable period of the principal New Hampshire business organization for use in both the tax base and apportionment factors in the following manner:
 - (1) The business organizations converting their taxable period shall use the months corresponding to the fiscal period of the principal New Hampshire business organization from their 2 fiscal years overlapping the required taxable period;
 - (2) The taxable income of the converting business organizations shall be determined in accordance with the method of accounting used for federal income tax purposes; and

(3) Any intergroup activity shall be removed from the tax base and apportionment factors of all business organizations included in the combined return in all years a combined return is filed regardless of the timing of its inclusion in the federal income tax return of the particular business organization.

(f) All business organizations conducting a unitary business shall be included in a combined return unless the required affiliation schedule has been prepared and submitted with Form NH-1120-WE, ~~“Combined Business Profits Tax Return Schedule”~~.

(g) A principal New Hampshire business organization shall file Form 1120-WE, ~~“Combined Business Profits Tax Return”~~, on or before the statutory due date pursuant to RSA 77-A:6, I based on the principal New Hampshire business organization's entity type.

(h) A principal New Hampshire business organization may request extensions of time for filing combined returns in (g) above, provided the request is made in accordance with Rev 307.089.

(i) The principal New Hampshire business organization required to pay estimated taxes on the combined net income of the combined group, as provided in RSA 77-A:6, II, shall file Form NH-1120-ES, ~~“Estimated Corporate and Combined Business Quarterly Payment Forms”~~, with payment on or before the 15th day of the fourth, sixth, ninth, and twelfth month of the taxable period to which they relate.

(j) For purposes of the exception provisions for overseas business organizations in RSA 77-A:1, XV, the business organization shall effect the certification required by the statute when a person authorized to sign returns on behalf of the company and members of the combined group signs the certification statement on Form ~~“BT-SUMMARY”~~, **“Business Tax Return Summary”**.

(k) A company which does not qualify as a principal New Hampshire business organization may elect to file a combined return on behalf of the ~~water's edge~~ combined group by:

(1) Complying with the uniform standards for forms described in Rev 29004.08;

(2) Completing the return with the name of the company included in the name and address sections of Form NH-1120-WE, ~~“Combined Business Profits Tax”~~, Form BET-80-WE, ~~“Business Enterprise Tax Apportionment for Combined Groups”~~ and Form BT-SUMMARY, ~~“Business Tax Return Summary”~~;

(3) Signing of the tax returns by a person authorized to sign returns on behalf of the company and members of the combined group which signature shall indicate agreement by the company to:

a. Assume the responsibility for the timely filing, on behalf of the combined group, for the following business tax returns:

1. Form NH-1120-WE, ~~“Combined Business Profits Tax”~~;

2. Form BET-80-WE, ~~“Business Enterprise Tax Apportionment for Combined Groups”~~; and

3. Form BT-SUMMARY, ~~“Business Tax Summary”~~;

b. Assume the responsibility for the timely payment of all business profits and business enterprise taxes, including any required extensions and estimated payments; and

- c. Allow the department to assess against and collect from the company, or any member of the combined group having a taxable presence in New Hampshire, taxes, interest, penalties or other charges that might be assessed against any member of the ~~water's edge~~ combined group for all tax years in which the return is filed by the company;
- (4) Agreeing to advise the **department's** audit division, at least 60 days before terminating the election and providing the name of the business organization that ~~will~~**shall** be filing future returns on behalf of the combined group, by letter at:

New Hampshire Department of Revenue Administration
Audit Division
P O Box 457
Concord, NH 03302-0457; and
- (5) Complying with all of the statutes and rules that apply to the filing of a combined return.

Adopt Rev 307.08, to read as follows:

Rev 307.08 Qualified Investment Company Election & Reporting.

(a) Definitions:

- (1) "Qualified Investment Company (QIC)" means a qualified investment company as defined in RSA 77-A:1, XXI.***
- (2) "New Hampshire investment trust" means a qualified investment company as defined in RSA 77-A:1, XXI.***
- (3) "Taxable period" means taxable period as defined in RSA 77-A:1, V. For purposes of tolling a part-year taxable period, the taxable period shall begin when the business entity is funded.***
- (b) A business entity that meets the definition of a QIC and elects QIC status for New Hampshire business tax purposes shall file a Form AU-207 "Qualified Investment Company (QIC) Election" on or before the fifteenth day of the third month of the taxable period pursuant to RSA 77-A:5-b.***
- (c) An election filed pursuant to (b) above shall remain effective until:***
 - (1) The election is revoked pursuant to RSA 77-A:5-b, V(a) and the revocation is filed with the department; or***
 - (2) The entity ceases to qualify as a QIC as provided in RSA 77-A:1, XXI.***
- (d) A revocation, pursuant to (b)(1) above, shall be filed with the department on or before the fifteenth day of the third month of the taxable period to be effective for that taxable period, otherwise, the revocation shall be effective for the following taxable period.***

(e) A business entity that has properly elected QIC status shall annually file Form AU-208 "Qualified Investment Company (QIC) Report," or the QIC federal income tax return, on or before 30 days following the filing of the QIC's federal income tax return with the United States Internal Revenue Service for the tax period.

(f) If the governing instrument of a New Hampshire investment trust creates one or more series trusts, as provided in RSA 293-B:8, II(d), each series trust shall elect to be treated as a QIC by:

(1) Each series trust filing a Form AU-207; or

(2) The parent company filing a single Form AU-207, with an attached schedule identifying each series trust, including a separate taxpayer identification number for each series.

(g) Each series trust, pursuant to (f)(1) above, that files a Form AU-207, shall annually file a Form AU-208, or the QIC federal income tax return, on or before 30 days following the filing of the QIC's federal income tax return with the United States Internal Revenue Service for the tax period.

(h) Each parent organization that files a Form AU-207, pursuant to (f)(2) above, shall annually file a Form AU-208, or the QIC federal income tax return, on or before 30 days following the filing of the QIC's federal income tax return with the United States Internal Revenue Service for the tax period.

Readopt with amendment Rev 307.08 through Rev 307.11, effective 8-25-06 (Document #8709), and renumber as Rev 307.09 through Rev 307.12, respectively, to read as follows:

Rev 307.08~~9~~ Extension of Time to File Returns.

(a) A business organization shall be granted an automatic 7 month extension of time to file a return provided the business organization has paid 100% of the tax determined to be due by the prescribed payment date.

(b) A business organization which has not paid the tax determined to be due through estimated payments shall pay the additional amount due on or before the prescribed payment date by filing Form BT-EXT, "Payment Form *and* Application ~~and Instructions~~ for **7-Month** Extension of Time to File **Business Tax Return** For All Businesses".

(c) Extensions shall be automatically denied for non compliance with (a) and (b) above.

(d) An extension of time for filing a business profits tax return shall not extend the time for the payment of the tax.

(e) Payments not made by the prescribed payment date shall be subject to the interest and penalty provisions of RSA 21-J.

Rev 307.09~~10~~ Amended Tax Returns.

(a) Business organizations amending an original business profits tax return for other than an **United States** Internal Revenue Service audit change shall file a regular New Hampshire state business profits tax ~~form~~**return**, as applicable to the entity type, for the particular tax year; with an "X" in the box next to the word "amended" on Form BT-SUMMARY~~summary~~.

(b) Amended business profits tax returns not requesting a refund or credit shall be filed within 3 years of the prescribed filing date for the original return as provided by RSA 21-J:29(a).

(c) Amended business profits tax returns requesting a refund or credit shall be filed within whichever is the later date as provided by RSA 21-J:29, I(b):

~~(1) The 3 years of the prescribed payment date for the tax; or~~

~~(2) The 2 years from the date the tax was actually paid.~~

~~(d) The 2 year period from the date the tax was actually paid shall not be applicable to an amended return requesting a refund or credit where the payment of tax, interest or penalty paid a result of an assessment or a demand for payment as provided by RSA 21 J:29, I(c).~~

(ed) Business organizations shall attach a copy of the appropriate federal income tax return to the amended business profits tax return.

Rev 307.10**I** Corrections Resulting From *United States* Internal Revenue Service Audit Changes.

(a) Business organizations shall report all federal audit changes as provided in RSA 77-A:10 when ~~proprietorships, partnerships, corporations, combined groups, and fiduciary business organizations~~ **file the appropriate** Form DP-87, "Report of Change **for IRS Adjustment Only**", **in accordance with (c) below, by** attaching a clear and legible copy of the federal revenue agent's report, closing agreement and court decision where applicable.

(b) For purposes of this section, federal audit changes shall have been finally determined when:

(1) The business organization has:

a. Made payment on any additional income tax liability resulting from the federal audit; and

b. Not filed a petition for redetermination or claim for refund for the portions of the audit on which payment was made;

(2) The business organization has received a refund from the U.S. Department of the Treasury resulting from the federal audit;

(3) The business organization has signed federal ~~f~~Form 870 or other ***United States*** Internal Revenue Service form consenting to the deficiency or accepting any over-assessment;

(4) The business organization's time period for filing its federal petition for redetermination to the United States ~~Tax C~~court has expired;

(5) The business organization enters into a closing agreement with the ***United States*** Internal Revenue Service as provided in section 7121 of the ~~Internal Revenue Code~~ as amended; or

(6) A decision from the U.S. Tax Court, U.S. District Court, U.S. Court of Appeals, U.S. Court of Claims or the U.S. Supreme Court becomes final.

(c) A separate Form DP-87, ~~"Report of Change"~~, shall be prepared for:

(1) Each business organization; and

(2) Each year affected by the federal audit.

- (d) Form DP-87 shall be submitted under separate cover.
- (e) Payment of any additional liability shall accompany Form DP-87.
- (f) The principal New Hampshire business organization shall file Form DP-87 on behalf of all members of the combined group included within a combined return covering the years of the federal audit.
- (g) The statute of limitations shall only be opened for a federal audit change on a return for the items of income, expense and apportionment that are directly affected by the specific changes within the federal revenue agent's report, closing agreement or court decision.

Rev 307.142 Short Period Returns.

(a) A business organization, whose taxable period is less than 12 months, shall use the applicable New Hampshire business profits tax ~~form~~**return** for the particular year and place an "X" ~~in~~ in the box next to the words "Short Period Return" at the top of the front page.

(b) Short period returns shall be filed following the close of the business organization's taxable period as defined in RSA 77-A:1, V, by:

- (1) The 15th day of the third month for corporations or combined groups; and
- (2) The 15th day of the fourth month for all other entities.

(c) An extension of time to file a short period return may be requested by submitting a letter accompanied by the payment of **100% of the tax determined to be due** ~~any estimated tax liability~~ prior to the due dates referred to in (b) above, indicating the length of additional time required to file the return.

(d) The request **for an extension** shall be mailed to:

New Hampshire Department of Revenue Administration
Document Processing Division
P.O. Box 637
Concord, NH 03302-0637.

Readopt with amendment Rev 308, effective 8-25-06 (Document #8709), to read as follows:

PART Rev 308 ADMINISTRATION

Rev 308.01 Taxpayer Records and Information.

(a) Every business organization shall maintain:

- (1) All accounting, financial, or general information necessary to establish the amount of gross income, deductions, credits or any other information required to be shown on any return, schedule or attachment required under RSA 77-A and any department rules adopted to implement the business profits tax such as, **but not limited to:**
 - a. General ledger;
 - b. Cash receipts records;
 - c. Cash disbursements records;

- d. Sales records;
- e. Payroll records;
- f. Bank statements with all enclosures;
- g. Paid and unpaid invoices from vendors;
- h. Correspondence, contracts or other agreements;
- i. Federal tax returns and all schedules attached or required to be attached thereto; ~~and~~
- j. State and local tax returns and all schedules attached or required to be attached thereto for all jurisdictions in which the business organization has activities; **and**

k. Any electronic records maintained by the taxpayer; and

~~(2) The records enumerated in (a)(1) above may be maintained in either a formal or informal nature such as in a worksheet format provided that such worksheets shall be the basis for the preparation of any financial statements and federal or state tax returns;~~

~~(32)~~ The records shall be retained for a minimum period of 3 years from the date the returns were filed ***with the department*** or until the completion of all:

- a. Audits commenced by the department;
- b. Administrative appeals pending before the department; and
- c. Judicial proceedings pending between the business organization and the department.

(b) Every business organization shall provide the commissioner or ~~his~~ ***the commissioner's*** authorized representative's ***designee*** access to:

(1) All records or information necessary to establish the amount of gross income, deductions, credits or other information required to be shown on any return, schedule or attachment required under RSA 77-A and any department rules adopted to implement the business profits tax;

(2) Key company personnel for interviews where applicable upon advance notice and at times during the regular business day;

(3) Minutes of meetings for the business organization's:

- a. Board of directors;
- b. Audit committee;
- c. Compensation committee;
- d. Finance committee; ~~or~~ ***and***
- e. Other similar committees or subcommittees of the board, where applicable;

(4) Consolidated or separate federal income tax returns and all related schedules and exhibits as filed with the ~~U-nited S-tates~~ Internal Revenue Service including ~~Internal Revenue Service~~ ***federal*** ~~Form~~ 5471 or other similar document for each year under audit;

- (5) Annual financial statements, **notes** and supporting schedules, including consolidating work papers for each year under audit;
 - (6) A reconciliation between net income from financial statements and net income per books on **federal Form** Schedule M ~~of the federal income tax return~~ as filed with the United States Internal Revenue Service for each year under audit;
 - (7) A reconciliation between the business organization's gross business profits and the ~~Internal Revenue Code~~ as described in RSA 77-A:1, XX;
 - (8) Schedules of sales, payrolls and properties by state and supporting documentation **to support that can be tied to** the respective apportionment factor ~~denominators~~ for each year under audit;
 - (9) Federal unemployment and withholding returns filed with the United States Internal Revenue Service for each year under audit;
 - (10) A New Hampshire unemployment return as filed with the New Hampshire department of employment security for each year under audit;
 - (11) Schedules of income taxes, franchise taxes based on income, and capital stock taxes listing the state, type of tax, and amount for each year under audit;
 - (12) Completed state tax returns for states other than New Hampshire where business is conducted;
 - (13) Any listing of any key officers or employees who have substantial knowledge of and access to documentation on:
 - a. Pricing policies;
 - b. Profit centers or other methods of allocating income and expense among related parties;
 - c. Methods of factor determination; ~~or~~ **and**
 - d. Other data to establish a business organization's proper tax liability;
 - (14) Any records or information to establish that uncontrolled market prices were used for all intergroup activity between members of a combined group and any overseas business organization; ~~and~~
 - (15) Company policy and procedure manuals **and any other information** used **to establish the operational policies of** ~~by~~ the business organization; **and**
 - (16) **Any electronic records statements, including but not limited to accounting software.**
- (c) Every business organization having overseas business organizations or foreign dividends from unitary sources shall maintain the financial records necessary to verify:
- (1) That 80% or more of the dividend payor's average payroll and property is assignable to a location outside the 50 states **or territory or possession of the United States** and the District of Columbia;
 - (2) The amount of dividend paid by each payor;

- (3) The taxable income of the payor based upon United States tax standards;
- (4) The foreign apportionment factor information for each dividend payor as ~~generally~~ required under Rev 304.02, Rev 304.05 and Rev 304.06; and
- (5) Any additional information **supporting** ~~contained on schedules I, II and III of Form NH-1120-WE, "Combined Business Profits Tax Return and Affiliated Schedules.~~

Rev 308.02 Confidentiality of Department Records.

- (a) All business profits tax returns and information shall be confidential pursuant to Rev 2903.02.
- (b) A power of attorney shall be submitted to the department prior to, or in conjunction with, a request for information or any discussion with the department regarding the business organization or the organization's business affairs.

Rev 308.03 Informal **Pre-Assessment** Conference.

- (a) The purpose of an informal **pre-assessment** conference shall be to discuss the audit findings with taxpayers and **the department's** audit division ~~management personnel~~ in an effort to reach an agreement on the issues of facts, audit results, or both.

(b) At the conclusion of an audit, when the facts and circumstances of the audit review indicate to the department that an informal **pre-assessment** conference would benefit both the state and the business organization, the business organization may request and the **department's** audit division shall provide an informal **pre-assessment** conference for the business organization, or its authorized representative.

(c) The **department's** audit division shall notify the business organization or the authorized representative by mail of:

- (1) The date, time and location for the **informal** conference; and
- (2) The advance information that the business organization or ~~theits~~ authorized representatives shall be requested to provide **to the department's** audit division.
- (d) The information specified in (c)(2), above, shall include: ~~an outline of the areas of the agreement and disagreement and requests for responses to outstanding questions raised during the audit.~~

(1) The name, address and taxpayer identification number of the taxpayer;

(2) An outline of the areas of agreement and disagreement;

(3) Documentation in support of the business organization's position such as, but not limited to:

a. Citations of supporting case law;

b. Statutory or regulatory provisions; and

c. Documents or correspondence from unrelated parties;

(4) Responses to any outstanding questions raised by the department's auditor during the audit; and

(5) The names of the individuals who shall participate in the informal conference on behalf of the business organization.

(e) Upon completing a review of material provided during the informal conference, the ~~department's~~ audit division shall determine the appropriate disposition of the audit *or review, notification of which shall begin the period for formal appeal to the commissioner under RSA 21-J:28-b and Rev 200* ~~to include the issuance of a notice of assessment tax bill, notice of refund or no change letter.~~

Readopt with amendment Rev 309, effective 8-25-06 (Document #8709), to read as follows:

PART Rev 309 CERTIFICATIONS

Rev 309.01 Requests for Certifications of *Good Standing*, Dissolution, *or* Withdrawal ~~or Good Standing.~~

(a) ~~The following requirements shall apply to requests for T~~ the issuance of certification statements for *good standing*, dissolution, *or* withdrawal ~~or good standing shall be subject to the following requirements:~~

(1) ~~Requests for these documents~~ *Taxpayers* shall be ~~on file~~ Form AU-22, "Certification Request Form" and mailed to:

New Hampshire Department of Revenue Administration
~~Audit Division~~ *Central Tax Services*
PO Box ~~457~~ *3306*
Concord, NH 03302-~~0457~~ *3306*;

(2) Certification statements shall be mailed to the business organization unless the request authorizes the department to send them *certification statements* to someone other than the business organization;

(3) The non-refundable fees under RSA 77-A:18 for the certification statements referred to in this section shall not be used to offset any outstanding tax liability;

(4) The non-refundable fees paid for the certification statements referred to in this section shall be considered fully expended when:

- a. The requested certification statements ~~is~~ *are* issued to the business organization; or
- b. The business organization or its authorized representative is notified that the department is unable to issue the required certification statements and the reasons why it cannot do so;

(5) All checks for the fees shall be made payable to the state of New Hampshire; and

(6) If a request for the certification statement is signed by someone other than a corporate officer, general partner, managing member or the proprietor, ~~the request~~ *the request* shall be accompanied by:

~~a. A power of attorney authorizing someone to act as an agent for a taxpayer as prescribed in Rev 2903.03.~~ ~~or~~

~~b. A letter indicating:~~

- ~~1. The name, address and federal identification number of the person designated to act as the business organization's authorized representative for this matter; and~~
- ~~2. The extent of the authority granted to the person regarding this matter.~~

Rev 309.02 Certification of Good Standing.

(a) Business organizations requesting the issuance of a certification statement of good standing from the ~~New Hampshire~~ department of ~~revenue administration~~ shall submit to the department:

- (1) Form AU-22, ~~“Certification Request Form”~~ signed by a corporate officer, general partner, managing member, proprietor, or a duly authorized representative; and
- (2) Payment of the fee established by RSA 77-A:18, III.

(b) The certification statement of good standing shall be issued within 30 days of the later of receiving:

- (1) The request; or
- (2) All the required returns and documents~~ation~~ from the business organization.

Rev 309.03 Certification of Dissolution.

(a) Business organizations which are dissolving and ~~are~~ seeking a certification statement of dissolution shall submit to the department:

- (1) Form AU-22, ~~“Certification Request Form”~~ signed by a corporate officer, **general partner**, managing member, **proprietor**, or a duly authorized representative;
- (2) Payment of the fee established by RSA 77-A:18, I(b); and
- (3) The following information:
 - a. A final New Hampshire business profits tax return, including clear and legible copies of the final federal **tax** return which reflects the disposition of all corporate assets;
 - b. A clear and legible copy of federal ~~f~~Form 966, **“Corporate Dissolution or Liquidation”**;
 - c. Clear and legible copies of any federal ~~f~~Forms 4797, 6252, ~~or both, pertaining to the sale of corporate assets~~ and any other schedules that ~~is~~**are** required to show the breakdown of the sale of assets;
 - d. A copy of the corporate minutes adopting the liquidation, describing the disposition of the corporate assets; and
 - e. A copy of the plan of liquidation, if one exists.

(b) The department shall issue the requested **dissolution** certification statement or a letter of denial with the reasons for the denial within 60 days of the later of receiving:

- (1) The request; or

- (2) All the required returns and documentation from the business organization.

Rev 309.04 Certification for Withdrawal.

(a) Business organizations seeking a certification statement for withdrawal shall submit to the department:

- (1) A letter signed by ~~the proprietor, a general partner,~~ a corporate officer, **general partner** a managing member, **proprietor**, or their a duly authorized representative; and

- (2) Payment of the fee established by RSA 77-A:18, II.

(b) The business organization shall provide:

- (1) An explanation for the withdrawal;
- (2) A copy of federal ~~f~~Form 966 if a plan of liquidation has been adopted; and
- (3) A final New Hampshire business profits tax return which addresses the disposition of all ~~this state~~ **New Hampshire** assets;

(c) The department shall issue the requested **withdrawal** certification statement or a letter of denial with the reasons for the denial within 60 days of the later of receiving:

- (1) The request; or
- (2) All the required returns and documents~~ation~~ from the business organization.

Readopt with amendment Rev 310, effective 8-25-06 (Document #8709), to read as follows:

PART Rev 310 APPLICATION OF PENALTIES

Rev 310.01 Substantial Understatement of Tax.

(a) The department shall assess the 25% penalty for understatement of tax, provided by RSA 21-J:33-a, on returns where the understatement exceeds the greater of 10% of the correct tax liability or \$5,000 unless the business organization meets one of the following exceptions:

- (1) The business organization adequately disclosed the relevant facts regarding the tax treatment of the item generating the understatement; or
- (2) The business organization had substantial authority for its tax treatment of such item.

(b) A business organization shall have adequately disclosed the tax treatment of an item on the return or in a statement attached to the front of the return if all of the following criteria are met:

- (1) The statement contains a prominent caption identifying the statement as a disclosure of the tax treatment for the substantial under~~statement~~ ~~payment~~ penalty provided in RSA 21-J:33-a;
- (2) The item for which the disclosure is made is clearly identified;
- (3) The dollar amount of the item is disclosed; and

(4) The statement contains those facts affecting the tax treatment of the item that reasonably will apprise the department of the nature of the potential controversy or a concise description of the legal issues presented by the facts in question.

(c) A business organization shall have substantial authority for the tax treatment of an item if the weight of the authorities supporting the treatment of the item is substantial in relation to the weight of the authorities supporting the position of the department.

(d) Substantial authority, shall be considered as the following authoritative sources:

(1) For items applying specifically to the application of the business profits tax:

- a. Any New Hampshire statutes that have a bearing on the tax statutes;
- b. New Hampshire department of revenue administration rules;
- c. Declaratory rulings issued by the department to the business organization;
- d. Department technical information releases;
- e. Superior court and board of tax and land appeals decisions;
- f. Federal District Court and First Circuit Court of Appeals decisions;
- g. United States and New Hampshire supreme court decisions;
- h. Legislative committee reports specifying legislative intent; and
- i. Written advice from the department issued to the business organization about the tax treatment of the item in question; and

(2) For items ~~in~~ arriving at federal taxable income before any state required adjustments:

- a. ~~Internal Revenue Code~~ and other statutory provisions;
- b. Temporary and final U.S. Department of the Treasury regulations;
- c. Federal or state court cases;
- d. *United States* Internal Revenue Service or U.S. Department of the Treasury administrative pronouncements including revenue rulings and revenue procedures;
- e. Tax treaties and related regulations, as well as the U.S. Department of the Treasury's or other official explanation of such treaties;
- f. Congressional intent as reflected in ~~C~~committee ~~R~~reports, joint explanatory statements of managers included in the conference committee reports and floor statements made by the bill's managers prior to enactment;
- g. Controlling precedent of the United States ~~C~~court of ~~A~~appeals to which the business organization has a right of appeal;
- h. Technical advice memoranda, ruling or determination letters issued to the business organization or in which the business organization is named;
- i. An affirmative statement in a *U.S. Internal R*evenue *S*ervice "agent's report with respect to the business organization's prior taxable periods; and

j. Any other source which was accepted by the *United States* Internal Revenue Service as substantial authority.

(e) The following shall not be considered authoritative sources:

- (1) Opinions reached by tax professionals;
- (2) Tax publication opinions or narrative statements; and
- (3) Articles contained in professional or tax periodicals.

(f) The existence of substantial authority for a particular item shall be determined as of the date the return containing the item was filed, or, as of the last day of the taxable period to which the return relates, whichever is later.

(g) The penalty shall be applied to the net understatement determined by reducing the understatement, as defined in RSA 21-J:33-a, III, by the portion of the understatement for which the business organization had substantial authority or had adequately disclosed the position taken on the return.

Rev 310.02 Understatement of Taxpayer's Liability by Tax Preparer.

(a) For purposes of RSA 21-J:33-b, I, "substantial portion" means any instance where the efforts of the tax preparer have affected more than 25% of the business organization's tax liability.

(b) An individual or company providing more than typing, reproducing, or other mechanical assistance shall be deemed to be a tax preparer when the individual or company uses computer software which makes determinations about the applicability of tax laws or the characterizations of income and the allowability of deductions or credits.

(c) The penalty provided in RSA 21-J:33-b, III shall be assessed when any part of an understatement of tax is the result of a tax preparer's willful neglect or intentional disregard of the statute or departmental rules unless the business organization ~~shall have~~ adequately disclosed the tax treatment of an item on the return in a written statement as provided in Rev 310.01(b).

(d) A tax preparer shall be deemed to have acted with willful neglect or intentional disregard when the preparer fails to:

- (1) Comply with a statutory provision as interpreted in an opinion of the New Hampshire supreme court;
- (2) Comply with a department rule prescribing the appropriate tax treatment of an item contained in the business profits tax return; or
- (3) Follow a statute, rule or court decision that addresses the proper *tax* treatment of an item or issue.

(e) The penalty provided in RSA 21-J:33-b, IV shall be applied when any part of an understatement of tax is the result of a *tax* preparer's willful attempt to understate the business organization's tax liability.

(f) A tax preparer shall be deemed to have made a willful attempt to understate a tax liability of a business organization by:

(1) Disregarding or misstating information furnished by the business organization, or other person in an attempt to wrongfully reduce the tax liability; or

(2) Not making inquiries of the business organization or other person when the information provided is incorrect or incomplete, and the **tax** preparer knows or should have known that the information was incorrect or incomplete.

(g) If, ***it is established*** in an adjudicative proceeding ***decision*** or a judicial decision, ~~it is established~~ that there was no understatement of liability and, if previously paid by the **tax** preparer, the ***understatement*** penalty imposed by RSA 21-J:33-b shall be abated and refunded.

(h) The refund of the ***understatement*** penalty shall be made without any consideration of any period of limitation for the issuance of a refund.

Rev 310.03 Aiding and Abetting an Understatement of Tax Liability.

(a) The penalty provided in RSA 21-J:33-c shall be assessed against any person who assists in, procures or advises in the preparation of any return or other document in connection with the business profits tax or departmental rules if the person knows that:

(1) The information provided ~~will~~**shall** be used in the preparation of any material document; and

(2) If used, the information ~~will~~**shall** result in an understatement ***penalty*** of tax liability.

(b) The ***understatement*** penalty shall not be assessed in instances where the business organization adequately disclosed the relevant facts regarding the tax treatment of the item in the manner provided in Rev 310.01 (b).

(c) If, in an adjudicative proceeding ***decision*** or a judicial decision, it is established that there was no understatement ***penalty*** of liability and if previously paid by the **tax** preparer, then the ***understatement*** penalty imposed by RSA 21-J:33-c shall be abated and refunded.

(d) The refund of the ***understatement*** penalty shall be made without any consideration of any period of limitation for the issuance of a refund.

Readopt with amendment Rev 311, effective 8-25-06 (Document #8709), to read as follows:

PART Rev 311 BUSINESS PROFITS TAX FORMS AND RETURNS

Rev 311.01 Availability of Forms and Returns. All business profits tax forms may be obtained:

(a) Online at www.revenue.nh.gov; ~~govem~~;

(b) By calling the telephone forms line at ~~604-271-2192~~**603-230-5001**; or

(c) By writing to:

New Hampshire Department of Revenue Administration
~~Forms Committee~~**Document Processing Division**
P.O. Box ~~457~~**637**
Concord, NH 03302-04**57**~~637~~.

Rev 311.02 Form BT-EXT, “Payment Form and Application for 7-Month Extension of Time to File Business Tax Return”.

(a) Business organizations that have not paid 100% of their tax liability and need an extension to file their business profits tax return shall:

(1) Pay the remainder of their tax liability; and

(2) File Form BT-EXT, ~~“Payment Form and Application for 7-Month Extension of Time to File Business Tax Return”~~, in accordance with RSA 77-A:9.

(b) Business organizations that have paid 100% of their tax liability and need an extension to file their business profits tax return, shall receive an automatic 7-month extension to file their tax returns without completing Form BT-EXT.

(c) A granted extension of time shall extend the due date of the return, but *shall* not extend the due date of any payment.

Rev 311.03 Form BT-SUMMARY, “Business Tax *Return* Summary”.

(a) Form BT-SUMMARY, “Business Tax *Return* Summary”, shall be filed by business organizations to report all business profits tax liabilities, interest, penalties and payments to the department.

(b) Form BT-SUMMARY ~~summary~~ shall be accompanied by the applicable business profits tax *and business enterprise tax* returns and copies of the *federal Forms* and schedules used to support the information being reported *by business organizations other than proprietorships*.

(c) Proprietorships ~~combining the income of both spouses~~ shall file Form BT-SUMMARY *for each spouse*, ~~signed by both of them~~, with *all applicable* business profits tax returns that includes their taxable business profits.

Rev 311.04 Form DP-87, “Report of Change *for IRS Adjustment Only*”.

(a) Form DP-87, “Report of Change *for IRS Adjustment Only*”, shall be submitted by a *combined group*, corporation, partnership, proprietorship or fiduciary business organization for any change in the amount of its New Hampshire gross business profits as determined by the United States Internal Revenue Service.

(b) A separate ~~submission~~ *Form DP-87* shall be prepared for each year to which a federal change applies.

(c) Each ~~submission~~ *Form DP-87* shall be accompanied by:

(1) A copy or copies of the federal change form or forms;

(2) The details of the federal changes, as to items and by entity; and

(3) The payment of any additional tax, ~~and~~ interest, *and penalties*.

(d) Each ~~submission~~ *Form DP-87* shall be submitted under separate cover.

APPENDIX

RULE	STATUTE
Rev 301.01 – 301.36	RSA 21-J:13, I; RSA 77-A:15
Rev 302.01 – 302.15	RSA 21-J:13, I; RSA 77
Rev 303.01	RSA 21-J:13, I; RSA 77-A:4,III
Rev 303.02 – Rev 303.04	RSA 21-J:13, I; RSA 77
Rev 303.03(f)	RSA 77-A:4, XIII
Rev 304.01 – 304.11	RSA 21-J:13, I; RSA 77
Rev 305.01 – 305.04	RSA 21-J:13, I; RSA 77-A:15
Rev 306.01 – Rev 306.06	RSA 21-J:13, I; RSA 77-A:15
Rev 306.07	RSA 77-A:5, XV; RSA 77-G:3; RSA 77-G:4
Rev 307.01 – 307.12	RSA 21-J:13, I; RSA 77
Rev 308.01 – 308.03	RSA 21-J:13, I; RSA 77-A:15
Rev 309.01 – 309. 04	RSA 21-J:13, I; RSA 77-A:15
Rev 310.01 – 310.03	RSA 21-J:13, I; RSA 77-A:15
Rev 311.01 – 311.04	RSA 21-J:13, I; RSA 77-A:15